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Vol I

QUINTILIAN'S

INSTITUTES OF ORATORY;

OR,

EDUCATION OF AN ORATOR.

IN TWELVE BOOKS.

TRANSLATED WITH NOTES.

BY THE
REV. JOHN SELBY WATSON, M.A., M.R.S.L.

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PREFACE.

It was observed by Dr. Drake in his "Literary Hours," about fifty years ago, that no version of Quintilian at all adequate to the merits of the original existed in English, and that to translate him throughout with energy, spirit, and fidelity, would prove a task of the most arduous and difficult kind; such is the beauty of his diction, and such the peculiar propriety of his epithets.

The difficulties alleged by Dr. Drake are by no means exaggerated; and since his time no translator has applied himself to execute the task. The language of writers extremely nice in the choice of words and the collocation of phrases, is always difficult to render satisfactorily. What is graceful in the original can but seldom be made graceful in a version. But the present translator, if he has not entirely succeeded, hopes that he has no great cause to deprecate censure. He will only request that, should the student think some passages too freely rendered, he will bear in mind the necessity of endeavouring to satisfy the mere English reader; and that, if the English reader finds some passages too stiff, he will consider the necessity for a certain degree of closeness to answer the wants of the student.

Of the two translations which have previously appeared in English, those of Guthrie and Patsall, neither is complete, whole chapters being omitted in each. In regard to fidelity, Patsall is, on the whole, rather to be preferred; but neither

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he nor Guthrie had the requisite scholarship to do justice to their author. When they could not ascertain the sense of a passage, they substituted some vague paraphrase or omitted it altogether.

In the following pages the whole of the original is translated, and the utmost care has been taken to observe an exact adherence to the sense. On every obscure or corrupt passage, illustration is given in a note. The text which has been used is that of Spalding, from whose valuable commentary much useful matter has been adopted.

J. S. W.

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QUINTILIAN

ON THE

EDUCATION OF AN ORATOR.

QUINTILIAN TO TRYPHO,*

WISHING HEALTH.

You have prevailed on me, by your daily importunity,† to proceed at once to publish the books on the Education of an Orator, which I had addressed to my friend Marcellus; for, for my own part, I thought that they were not yet sufficiently advanced towards perfection.‡ On the composition of them, as you know, I spent little more than two years, while distracted by so many other occupations;§ and this time was devoted, not so much to the labour of writing, as to that of research for the almost boundless work which I had undertaken, and to the perusal of authors, who are innumerable. Following, besides, the advice of Horace, who, in his Art of Poetry, recommends that publication should not be hurried, and that a work *should be retained till the ninth year*, I allowed time for re-considering them, in order that, when the ardour of invention had cooled, I might judge of them, on a more careful re-perusal, as a mere reader. Yet if they are so much demanded, as you say, let us give our sails to the winds, and pray for success

* An eminent bookseller at Rome, mentioned by Martial, iv. 72; xiii. 3.

† *Convicio.*] This word is not used here in a reproachful, but in a friendly sense; as in Cicero, Ep. ad Q. Fratr. ii. 10: *Epistolam hanc convicio efflagitârunt codicilli tui.* See also Cic. ad Div. xii. 25, and Pro Cluent. c. 27, where *convicium maximum fecit* is, as Spalding observes, for *maximopere contendit, poposcit.* "By *convicium* he means *acerrimæ preces.*" *Rollin.*

‡ *Satis—maturuisse.*] Nondum satis sunt expoliti. *Regius.*

§ *Tot alioqui negotiis districtus.*] "Distracted otherwise by so many occupations." He had not only to work at his book, but to attend to other men's affairs. Two manuscripts, says Burmann, have *aliorum* instead of *alioqui.*

as we loose our cable.* But much also depends on your faithfulness and care, that they may come into the hands of the public in as correct a state as possible.

PREFACE,

ADDRESSED TO

MARCELLUS VICTORIUS.

The object and intention of the work, § 1—3. To whom dedicated, 6. Unauthorized publications under the name of Quintilian, 7. The professions of the rhetorician and philosopher were formerly united, 9—16. The perfect orator, 17. Partition of the work, 21, 22. Further observations on teaching and speaking, 23—27.

When certain persons, after I had secured rest from my labours, which for twenty years I had devoted to the instruction of youth, requested of me, in a friendly manner, to write something on the art of speaking, I certainly resisted their solicitations for a long time; because I was not ignorant that authors of the greatest celebrity in both languages† had bequeathed to posterity many treatises having reference to this subject, written with the greatest care. 2. But by the very plea on which I thought that excuse for my refusal would be more readily admitted, my friends were rendered still more urgent; "since," they said, "amidst the various opinions of former writers, some of them contradicting each other, choice was difficult;" so that they appeared, not unjustifiably, to press upon me the task, if not of inventing new precepts, at least of pronouncing judgment concerning the old. 3. Although however it was not so much the confidence of accomplishing what was required of me, as the shame of refusing, that prevailed with me, yet, as the subject opened itself more widely, I voluntarily undertook a heavier duty than was laid

* *Oram solventibus.*] That the word *ora* means *funis nauticus* is apparent from Livy, xxii. 19; xxviii. 36, on which passages the reader may consult Drakenborch's edition. Quintilian also uses the word in the same sense in iv. 2, 41. It is aptly observed by Gesner, in his Thesaurus, that the word in this signification seems to have been peculiar to the common people and sailors, and is consequently but rare among writers. *Spalding.*

† Latin and Greek. *Docte sermonis utriusque linguæ.* Hor.

upon me, not only that I might oblige my best friends by fuller compliance, but also that, while pursuing a common road, I might not tread merely* in other men's footsteps.

4. Other authors, who have committed to writing the art of oratory, have in general commenced in such a manner, as if they were to put the last hand of eloquence† to those who were accomplished in every other kind of learning; whether from despising the branches of knowledge which we previously learn, as insignificant, or from supposing that they did not fall under their province, the duties of the professions being distinct; or, what is more probable, from expecting no credit to their ability in treating of subjects, which, however necessary, are yet far removed from display; as the pinnacles of buildings are seen, while the foundations are hid. 5. For myself, as I consider that nothing is unnecessary to the art of oratory, without which it must be confessed that an orator cannot be formed, and that there is no possibility of arriving at the summit of any thing without previous initiatory efforts; I shall not shrink from stooping to those lesser matters, the neglect of which leaves no place for greater;‡ and shall proceed to regulate the studies of the orator from his infancy, just as if he were entrusted to me to be brought up.

6. This work, Marcellus Victorius, I dedicate to you, whom, as being most friendly to me, and animated with an extraordinary love of letters, I deemed most worthy of such a pledge of our mutual affection; and not indeed on these considerations alone, though these are of great weight, but because my treatise§ seemed likely to be of use for the instruction of your son, whose early age shows his way clear to the full splendour of genius;‖ a treatise which I have resolved

* *Demum.*] Evidently put for *tantum*, the notion of *time* being set aside or forgotten. The word is often thus used in Quintilian and other writers of the same age. So Paulus Diaconus says, from Festus, "Alii *demum* pro *duntaxat* posuerunt." See also Ruhnken on Rutilius Lupus, p. 67. *Spalding.*

† *Perfectis—summam eloquentiæ manum.*] The word *eloquentiæ* is to be taken as a genitive, not as a dative; the dative is *perfectis*. *Spalding.* Burmann's edition, and others prior to Gesner's, have *summam in eloquentiâ manum.*

‡ *Quæ si negligas, non sit majoribus locus.*] "Which if you neglect, there is no place for greater."

§ *Libri.*] These twelve books on the education of an orator.

‖ *Ad ingenii lumen.*] Mosellanus cites Cicero, Brut. c. 15. Ut enim

to conduct, from the very cradle as it were of oratory, through all the studies which can at all assist the future speaker, to the summit of that art. 7. This I the rather designed, because two books on the Art of Rhetoric were already in circulation under my name, though neither published by me nor composed for that object; for, after holding two days' discourse with me, some youths, to whom that time was devoted, had caught up the first by heart; the other, which was learned indeed in a greater number of days (as far as they could learn by taking notes), some of my young pupils, of excellent disposition, but of too great fondness for me, had made known through the indiscreet honour of publication. 8. In these books, accordingly, there will be some things the same, many altered, very many added, but all better arranged,* and rendered, as far as I shall be able, complete.

9. We are to form, then, the perfect orator, who cannot exist unless as a good man;† and we require in him, therefore, not only consummate ability in speaking, but every excellence of mind. 10. For I cannot admit that the principles of moral and honourable conduct are, as some have thought, to be left to the philosophers; since the man who can duly sustain his character as a citizen, who is qualified for the management of public and private affairs, and who can govern communities by his counsels, settle them by means of laws, and improve them by judicial enactments, can certainly be nothing else but an orator. 11. Although I acknowledge, therefore, that I shall adopt some precepts which are contained in the writings of the philosophers, yet I shall maintain, with justice and truth, that they belong to my subject, and have a peculiar relation to the art of oratory. 12. If we have constantly occasion to discourse of justice, fortitude, temperance, and other similar topics, so that a cause can scarce be found in which some such discussion does not occur,‡ and if

hominis decus ingenium, sic *ingenii* ipsius *lumen* est eloquentia. "Quintilian may be thought to have had those words of Cicero in his mind, if the reading of the text be but sound." *Spalding.*

* *Compositiora.*] Magis ordinata; in unam compagem commissa. *Spalding.*

† See this point discussed at length, b. xii. c. 1.

‡ *In quam non aliqua quæstio ex his incidat*] "On which some question of these (questions) does not fall."

all such subjects are to be illustrated by invention* and elocution, can it be doubted that, wherever power of intellect and copiousness of language are required, the art of the orator is to be there pre-eminently exerted? 13. These two accomplishments, as Cicero very plainly proves,† were, as they are joined by nature, so also united in practice, so that the same persons were thought at once wise and eloquent. Subsequently, the study divided itself,‡ and, through want of art,§ it came to pass that the arts were considered to be diverse; for, as soon as the tongue became an instrument of gain, and it was made a practice to abuse the gifts of eloquence, those who were esteemed as eloquent abandoned the care of morals, which, when thus neglected, became as it were the prize of the less robust intellects.‖ 14. Some, disliking the toil of cultivating eloquence, afterwards returned to the discipline of the mind and the establishment of rules of life, retaining to themselves the better part, if it could be divided into two; but assuming, at the same time, the most presumptuous of titles,¶ so as to be called the only cultivators of wisdom; a distinction which neither the most eminent commanders, nor men who were engaged with the utmost distinction in the direction of the greatest affairs, and in the management of whole commonwealths, ever ventured to claim for themselves; for they preferred rather to practise excellence of conduct than to profess it. 15. That many of the ancient professors of wisdom, indeed, both delivered virtuous precepts, and even lived as they directed others to

* *Inventione.*] The faculty of finding out arguments, and all that concerns a cause.

† *Ut Cicero apertissimè colligit.*] See Cic. Orat. c. 15. "*Colligere* est argumentis—concludere et comprobare." *Regius.*

‡ It was in the time of Socrates that eloquence was first separated from philosophy; for Socrates, setting at nought and throwing discredit upon rhetoric, devoted himself wholly to philosophical discussion. *Turnebus.* See Cic. de Orat. iii. 19; Menag. ad Laërt. i. 12. *Almeloveen.*

§ *Inertiâ factum est ut artes esse plures viderentur.*] Quintilian, says Spalding, evidently plays upon the words *inertiâ* and *artes.* By *inertiâ* he seems to mean *want of art* or judgment to keep the two sciences or *arts*, that of rhetoric and that of philosophy, united.

‖ *Infirmioribus ingeniis.*] He calls them *infirmiora*, as being unfit for public business. *Regius.*

¶ Namely, that of philosophers *κατ' ἐξοχήν.*

live, I will readily admit; but, in our own times,* the greatest vices have been hid under this name in many of the professors: for they did not strive, by virtue and study, to be esteemed philosophers; but adopted a peculiarity of look, austerity of demeanour, and a dress different from that of other men, as cloaks for the vilest immoralities.

16. But those topics, which are claimed as peculiar to philosophy, we all everywhere discuss; for what person (if he be not an utterly corrupt character†) does not sometimes speak of justice, equity, and goodness? who, even among rustics, does not make some inquiries about the causes of the operations of nature? As to the proper use and distinction of words,‡ it ought to be common to all, who make their language at all an object of care. 17. But it will be the orator that will understand and express those matters best, and if he should ever arrive at perfection, the precepts of virtue would not have to be sought from the schools of the philosophers. At present it is necessary to have recourse, at times, to those authors who have, as I said, adopted the deserted, but pre-eminently better, part of philosophy, and to reclaim as it were what is our own; not that we may appropriate their discoveries, but that we may show them that they have usurped what belonged to others.

18. Let the orator, therefore, be such a man as may be called truly wise, not blameless in morals§ only (for that, in

* Quintilian seems to have written these observations after the philosophers were ejected from the city by the edict of Domitian. *Pithœus.* Dodwell thinks that Quintilian's work was finished before Domitian's edict, and supposes that he would not have ventured to praise philosophy or philosophers at all after such an edict; but Domitian, as Spalding observes, wished to be regarded as having proscribed the pretended philosophers of his time on account of the badness of their characters, not as having conceived a dislike to philosophy in general. There are some satirical verses on this edict ascribed to the poetess Sulpicia. On the character of the hypocritical philosophers of that day, see Juvenal, ii. 3, atque alibi.

† *Modò non et vir pessimus.*] For *et* Burmann would read *sit.* "Quintilian reflects on those senseless fellows (of whom there has been abundance at all times), who cannot even speak decently, but indulge in ribaldry, without the least regard for their character." *Pareus.*

‡ The attentive reader will notice that Quintilian alludes here to the three chief departments of philosophy, ethics, physics, and dialectics. *Gesner.*

§ *Moribus.*] By this word are properly meant both morals, and manners, and character in general.

my opinion, though some disagree with me, is not enough), but accomplished also in science, and in every qualification for speaking; a character such as, perhaps, no man ever was. 19. But we are not the less, for that reason, to aim at perfection, for which most of the ancients strove; who, though they thought that no wise man had yet been found, nevertheless laid down directions for gaining wisdom. 20. For the perfection of eloquence is assuredly something,* nor does the nature of the human mind forbid us to reach it; but if to reach it be not granted us, yet those who shall strive to gain the summit will make higher advances than those who, prematurely conceiving a despair of attaining the point at which they aim, shall at once sink down at the foot of the ascent.

21. Indulgence will so much the more then be granted me, if I shall not even pass over those lesser matters, which yet are necessary to the work which I have undertaken. The first book will, therefore, contain those particulars which are antecedent to the duties of the teacher of rhetoric. In the second we shall consider the first elements of instruction under the hands of the professor of rhetoric, and the questions which are asked concerning the subject of rhetoric itself. 22. The five next will be devoted to invention (for under this head will also be included arrangement), and the four following to elocution, within the scope of which fall memory and pronunciation. One will be added, in which the orator himself will be completely formed by us, since we shall consider, as far as our weakness shall be able, what his morals ought to be, what should be his practice in undertaking, studying, and pleading causes; what should be his style of eloquence, what termination† there should be to his pleading, and what may be his employments after its termination.

23. Among all these discussions shall be introduced, as occasion shall require, the ART OF SPEAKING, which will not only instruct students in the knowledge of those things to

* *Aliquid.*] Something that may actually be attained; not a mere fiction of the imagination.

† When he shall leave off pleading causes, and devote himself to other employment; for the orator, even when he has ceased to practise as an orator, is not to consider himself wholly released from his vocation. *Spalding.* He may instruct and advise. See Cic. Orat. i. 45.

which alone some have given the name of art, and interpret (so to express myself) the law of rhetoric, but may serve to nourish the faculty of speech, and strengthen the power of eloquence; 24. for, in general, those bare treatises on art,* through too much affectation of subtilty, break and cut down whatever is noble in eloquence, drink up as it were all the blood of thought, and lay bare the bones, which, while they ought to exist, and to be united by their ligaments, ought still to be covered with flesh. 25. We therefore have not, like most authors, included in our books that small part† merely, but whatever we thought useful for the education of the orator, explaining every point with brevity; for if we should say, on every particular, as much as might be said, no end would be found to our work.

26. It is to be stated, however, in the first place, that precepts and treatises on art are of no avail without the assistance of nature; and these instructions, therefore, are not written for him to whom talent is wanting, any more than treatises on agriculture for barren ground.

27. There are also certain other natural aids, as power of voice, a constitution capable of labour, health, courage, gracefulness; qualities which, if they fall to our lot in a moderate degree, may be improved by practice, but which are often so far wanting that their deficiency renders abortive the benefits of understanding and study; and these very qualities, likewise, are of no profit in themselves without a skilful teacher, persevering study, and great and continued exercise in writing, reading, and speaking.

* *Nudæ illæ artes.*] *Artes* was a name for books containing rules of rhetoric. *Spalding.*

† *Particulam illam.*] By *particula* Quintilian means the mere brief rules on the different parts of eloquence, laid down by other writers on the art. *Regius.*

BOOK I.

CHAPTER I.

Remarks on the capacities of boys in general, § 1—3. Of nurses, 4. 5. Of parents, slaves, and *pædagogi*, 6—11. Of learning Greek and Latin, 12—14. Of the proper age for beginning to learn, 15—19. Of the proper method of teaching children, 20—24. Of learning the alphabet, and of writing, 25—29. Of learning to read, of subjects for writing, of learning by heart, and of improving the pronunciation, 30—37.

1. Let a father, then, as soon as his son is born, conceive, first of all, the best possible hopes of him; for he will thus grow the more solicitous about his improvement from the very beginning; since it is a complaint without foundation that "to very few people is granted the faculty of comprehending what is imparted to them, and that most, through dulness of understanding, lose their labour and their time." For, on the contrary, you will find the greater number of men both ready in conceiving and quick in learning; since such quickness is natural to man; and as birds are born to fly, horses to run, and wild beasts to show fierceness, so to us peculiarly belong activity and sagacity of understanding; whence the origin of the mind is thought to be from heaven. 2. But dull and unteachable persons are no more produced in the course of nature than are persons marked by monstrosity and deformities; such are certainly but few. It will be a proof of this assertion, that, among boys, good promise is shown in the far greater number; and, if it passes off in the progress of time, it is manifest that it was not natural ability, but care, that was wanting. 3. But one surpasses another, you will say, in ability. I grant that this is true; but only so far as to accomplish more or less; whereas there is no one who has not gained something by study. Let him who is convinced of this truth, bestow, as soon as he becomes a parent, the most vigilant possible care on cherishing the hopes of a future orator.

4. Before all things, let the talk of the child's nurses not be ungrammatical. Chrysippus wished them, if possible, to be women of some knowledge; at any rate he would have the best, as far as circumstances would allow, chosen. To their morals, doubtless, attention is first to be paid; but let them also speak with propriety. 5. It is they that the child will hear

first; it is their words that he will try to form by imitation. We are by nature most tenacious of what we have imbibed in our infant years; as the flavour, with which you scent vessels when new, remains in them; nor can the colours of wool, for which its plain whiteness has been exchanged, be effaced; and those very habits, which are of a more objectionable nature, adhere with the greater tenacity; for good ones are easily changed for the worse, but when will you change bad ones into good? Let the child not be accustomed, therefore, even while he is yet an infant, to phraseology which must be unlearned.

6. In parents I should wish that there should be as much learning as possible. Nor do I speak, indeed, merely of fathers; for we have heard that Cornelia, the mother of the Gracchi (whose very learned writing in her letters has come down to posterity), contributed greatly to their eloquence; the daughter of Lælius* is said to have exhibited her father's elegance in her conversation; and the oration of the daughter of Quintus Hortensius, delivered before the Triumviri,† is read not merely as an honour to her sex. 7. Nor let those parents, who have not had the fortune to get learning themselves, bestow the less care on the instruction of their children, but let them, on this very account, be more solicitous as to other‡ particulars.

Of the boys,§ among whom he who is destined to this prospect is to be educated, the same may be said as concerning nurses.

8. Of *pædagogi*‖ this further may be said, that they should

* Caius Lælius, surnamed the Wise, had two daughters, one of whom was married to Caius Fannius, and the other to Mucius Scævola. See Cic. Brut. c. 58. *Regius.* From the passage of Cicero to which Regius refers, it appears that the one to whom Quintilian alludes was the wife of Mucius. *Burmann.*

† Of this speech Freinshemius, with the aid of Appian, has given some notion in his excellent supplement to Livy, cxxii. 44, 45; and there is an allusion to it in Val. Max. viii. 3. Hortensia pleaded before Octavianus, Antony, and Lepidus, for a remission of part of the tax laid on matrons. *Spalding.*

‡ Other duties not properly included under tuition, which parents who are themselves unlearned cannot discharge.—*Spalding.*

§ It is not free-born youths, compeers of the pupil, that Quintilian means, but young slaves. *Spalding.*

‖ There is no word in our language for the *pædagogus*, who was a

either be men of acknowledged learning, which I should wish to be the first object, or that they should be conscious of their want of learning; for none are more pernicious than those who, having gone some little beyond the first elements, clothe themselves in a mistaken persuasion of their own knowledge; since they disdain to yield to those who are skilled in teaching, and, growing imperious, and sometimes fierce, in a certain right, as it were, of exercising their authority (with which that sort of men are generally puffed up), they teach only their own folly. 9. Nor is their misconduct less prejudicial to the manners of their pupils; for Leonides, the tutor of Alexander, as is related by Diogenes of Babylon,* tinctured him with certain bad habits, which adhered to him, from his childish education, even when he was grown up and become the greatest of kings.

10. If I seem to my reader to require a great deal, let him consider that it is an orator that is to be educated; an arduous task, even when nothing is deficient for the formation of his character; and that more and more difficult labours yet remain; for there is need of constant study, the most excellent teachers, and a variety of mental exercises. 11. The best of rules, therefore, are to be laid down; and if any one shall refuse to observe them, the fault will lie, not in the method, but in the man.†

slave of good character, and sometimes of some education, that had the charge of young persons, but was quite distinct from the διδάσκαλος or *præceptor*. See Smith's Dictionary of Gr. and Rom. Antiq. art. *Pædagogus*.

* We have no book extant of Diogenes of Babylon; he was a Stoic philosopher, who came to Rome with Critolaus and Carneades in that celebrated embassy mentioned by Cicero, De Orat. ii. 37, 38, and who wrote on language and dialectics; nor is there any mention in other writers of the bad habits which Alexander contracted from his tutor, except an allusion to them in Hincmar, bishop of Rheims, Epist. xiv. ad Proceres Regni. *Spalding*. This passage of Hincmar was first pointed out by Colomesius, who observes that there is a second allusion to the subject in another letter of the same writer; and that it is also noticed by St. Jerome in his *Epist. ad Lætam de Institutione Paulæ filiæ*.

† *Quæ si quis gravabitur, non rationi defuerit, sed homini.*] Various explanations of these words have been attempted. The most satisfactory appears to be that of Spalding, who supplies *aliquid* as the nominative case to *defuerit*, and by *homini* understands him who disregards the rules

If however it should not be the good fortune of children to have such nurses as I should wish, let them at least have one attentive *pædagogus*, not unskilled in language, who, if anything is spoken incorrectly by the nurse in the presence of his pupil, may at once correct it, and not let it settle in his mind. But let it be understood that what I prescribed at first is the right course, and this only a remedy.

12. I prefer that a boy should begin with the Greek language, because he will acquire Latin, which is in general use, even though we tried to prevent him, and because, at the same time, he ought first to be instructed in Greek learning, from which ours is derived. 13. Yet I should not wish this rule to be so superstitiously observed that he should for a long time speak or learn only Greek, as is the custom with most people; for hence arise many faults of pronunciation, which is viciously adapted to foreign sounds, and also of language, in which when Greek idioms have become inherent by constant usage, they keep their place most pertinaciously even when we speak a different tongue. 14. The study of Latin ought therefore to follow at no long interval, and soon after to keep pace with the Greek; and thus it will happen, that, when we have begun to attend to both tongues with equal care, neither will impede the other.

15. Some have thought that boys, as long as they are under seven years of age, should not be set to learn, because that is the earliest age that can understand what is taught, and endure the labour of learning. Of which opinion a great many writers say that Hesiod was, at least such writers as lived before Aristophanes the grammarian,* for he was the first to deny that the Ὑποθῆκαι,† in which this opinion is found, was the work of that poet. 16. But other writers likewise, among

* Concerning this grammarian, consult especially F. A. Wolf's Prolegomena in Homerum, p. 216, *seqq.* *Spalding.*

† This poem is lost. It was attributed by some to the Centaur Chiron, the tutor of Achilles, but to Hesiod by the majority of writers, among whom was Aristophanes the comic poet, who is said by Phrynichus and Thomas Magister to have ridiculed it as the work of Hesiod, in his lost comedy of the Δαιταλῆς. Aristotle, Polit. vii. 17, seems very nearly to agree with Hesiod in opinion, though he does not (as Regius states, and after him Harles ad Fabric. Biblioth. Gr. v. 1, p. 15) make any allusion to this precept of Hesiod. *Spalding.*

whom is Erastothenes,* have given the same advice. Those, however, advise better, who, like Chrysippus, think that no part of a child's life should be exempt from tuition; for Chrysippus, though he has allowed three years to the nurses, yet is of opinion that the minds of children may be imbued with excellent instruction even by them. 17. And why should not that age be under the influence of learning, which is now confessedly subject to moral influence?† I am not indeed ignorant that, during the whole time of which I am speaking, scarcely as much can be done as one year may afterwards accomplish, yet those who are of the opinion which I have mentioned, appear with regard to this part of life to have spared not so much the learners as the teachers. 18. What else, after they are able to speak, will children do better,‡ for they must do something? Or why should we despise the gain, how little soever it be, previous to the age of seven years? For certainly, small as may be the proficiency which an earlier age exhibits, the child will yet learn something greater during the very year in which he would have been learning something less. 19. This advancement extended through each year, is a profit on the whole; and whatever is gained in infancy is an acquisition to youth. The same rule should be prescribed as to the following years, so that what every boy has to learn, he may not be too late in beginning to learn. Let us not then lose even the earliest period of life, and so much the less, as the elements of learning depend on the memory alone, which not only exists in children, but is at that time of life even most tenacious.

20. Yet I am not so unacquainted with differences of age, as to think that we should urge those of tender years severely, or exact a full complement of work from them; for it will be

* He was the keeper of the Alexandrian library in the time of Ptolemy Euergetes, and the author of several books, which are all lost, except some fragments of his Geography, which have been collected by Ancher, Seidel, and Bernhardy. A work called Κατασ-τερισμοί went for a long time under his name, but is now considered to be some grammarian's compilation from Hyginus. See Dr. Smith's Dictionary of Biography and Mythology, and Fabricius's Bibl. Gr. vol. iv. p. 117, ed. Harl.

† *Cur autem non pertineat ad literas ætas, quæ ad mores jam pertinet?*] "Why should not that age belong to learning, which already belongs to manners or morals."

‡ Better than learning to read.

necessary, above all things, to take care lest the child should conceive a dislike to the application which he cannot yet love, and continue to dread the bitterness which he has once tasted, even beyond the years of infancy. Let his instruction be an amusement to him; let him be questioned, and praised; and let him never feel pleased that he does not know a thing; and sometimes, if he is unwilling to learn, let another be taught before him, of whom he may be envious. Let him strive for victory now and then, and generally suppose that he gains it; and let his powers be called forth by rewards, such as that age prizes.

21. We are giving small instructions, while professing to educate an orator; but even studies have their infancy; and as the rearing of the very strongest bodies commenced with milk and the cradle, so he, who was to be the most eloquent of men, once uttered cries, tried to speak at first with a stuttering voice, and hesitated at the shapes of the letters. Nor, if it is impossible to learn a thing completely, is it therefore unnecessary to learn it at all.* 22. If no one blames a father, who thinks that these matters are not to be neglected in regard to his son, why should he be blamed who communicates to the public what he would practise to advantage in his own house? And this is so much the more the case,† as younger minds more easily take in small things; and as bodies cannot be formed to certain flexures of the limbs unless while they are tender, so even strength itself makes our minds likewise more unyielding to most things. 22. Would Philip, king of Macedonia, have wished the first principles of learning to be communicated to his son Alexander by Aristotle, the greatest philosopher of that age, or would Aristotle have undertaken that office, if they had not both thought that the first rudiments of instruction are best treated by the most accomplished teacher, and have an influence on the whole course? 24. Let us suppose, then, that Alexander were committed to me, and laid in my lap, an infant worthy of so much solicitude (though every

* *Nec si quid discere satis non est, ideo nec necesse est.*] If a child cannot learn so much of anything as we could wish, it is not on that account proper that he should be kept from learning it altogether.

† *Atque eo magis quod.*] So much the more is a father *not to be blamed, i.e.* is to be commended for paying attention to small matters in the education of his son.

man thinks his own son worthy of similar solicitude), should I be ashamed, even in teaching him his very letters, to point out some compendious methods of instruction?

For that at least, which I see practised in regard to most children, by no means pleases me, namely, that they learn the names and order* of the letters before they learn their shapes. 25. This method hinders their recognition of them, as, while they follow their memory that takes the lead,† they do not fix their attention on the forms of the letters. This is the reason why teachers,‡ even when they appear to have fixed them sufficiently in the minds of children, in the straight order in which they are usually first written,§ make them go over them again the contrary way, and confuse them by variously changing the arrangement, until their pupils know them by their shape, not by their place. It will be best for children, therefore, to be taught the appearances and names of the letters at once, as they are taught those of men. 26. But that which is hurtful with regard to letters, will be no impediment with regard to syllables.‖ I do not disapprove, however, the practice, which is well known, of giving children, for the sake of stimulating them to learn, ivory figures of letters to play with, or whatever else can be invented, in which that infantine age may take delight, and which may be pleasing to handle, look at, or name.

27. But as soon as the child shall have begun to trace the forms of the letters, it will not be improper that they should be cut for him, as exactly as possible, on a board, that his

* *Contextum.*] Their arrangement and position in the alphabet. *Spalding.*

† *Antecedentem memoriam.*] They know by heart the order in which the letters follow each other, and therefore do not attend sufficiently to their shapes, but pronounce their names as it were from memory. *Turnebus.* I quote this note from Turnebus because Spalding hesitates at *antecedentem*, not knowing what sense to give it, and observing that Gedoyne renders the words, *leur mémoire qui va plus vite que leurs yeux.* But Turnebus is undoubtedly right.

‡ *Quæ causa est præcipientibus, ut.*] "Which is the cause to teachers that."

§ The order of the alphabet, in which letters are first shown to children, before they begin to form them into syllables.

‖ It will do no harm if boys learn syllables by heart before they know the look of them. *Regius.*

style* may be guided along them as along grooves, for he will then make no mistakes, as on wax (since he will be kept in by the edge on each side, and will be unable to stray beyond the boundary†); and, by following these sure traces rapidly and frequently, he will form his hand, and not require the assistance of a person to guide his hand with his own hand placed over it. 28. The accomplishment of writing well and expeditiously, which is commonly disregarded by people of quality, is by no means an indifferent matter; for as writing itself is the principal thing in our studies, and that by which alone sure proficiency, resting on the deepest roots, is secured, a too slow way of writing retards thought, a rude and confused hand cannot be read; and hence follows another task, that of reading off what is to be copied from the writing.‡ 29. At all times, therefore, and in all places, and especially in writing private and familiar letters, it will be a source of pleasure to us, not to have neglected even this acquirement.

30. For learning syllables there is no short way; they must all be learned throughout; nor are the most difficult of them, as is the general practice, to be postponed, that children may be at a loss, forsooth, in writing words.§ 31. Moreover, we must not even trust to the first learning by heart; it will be better to have syllables repeated, and to impress them long upon the memory; and in reading too, not to hurry on, in order to make it continuous or quick, until the clear and certain connexion of the letters become familiar,‖ without at least any necessity to stop for recollection. Let the pupil then begin to form words from syllables, and to join phrases together from words. 32. It is incredible how much retardation is caused to reading by haste; for hence arise hesita-

* The iron pencil used for writing on waxed tablets.

† Spalding notices that this passage is somewhat tautological, but says that it is the same in all the manuscripts.

‡ *Quæ ex his transferenda sunt.*] By *his* is meant *tam malè scriptis commentariis. Spalding.*

§ *Ut in nominibus scribendis deprehendantur*] *Deprehendi* is *hærere*, to be obliged to hesitate, to be brought to a stand, to be nonplussed; as in xii. 8, 6. . . . *Ut* is used with a certain irony, as if tutors put off the learning of difficult syllables *for the very purpose* of puzzling the child afterwards. *Spalding.* Burmann and Gesner give the same sense to *deprehendantur* which Spalding gives.

‖ *Suppeditare—poterit.*] *Poterit suppeditare se*, "shall be able to present itself." *Nisi quum*, "unless when," I have rendered by "until"

tion, interruption, and repetition, as children attempt more than they can manage; and then, after making mistakes, they become distrustful even of what they know. 33. Let reading, therefore, be at first sure, then continuous, and for a long time slow, until, by exercise, a correct quickness is gained. 34. For to look to the right, as everybody teaches, and to look forward, depends not merely on rule, but on habit,* since, while the child is looking to what follows, he has to pronounce what goes before, and, what is very difficult, the direction of his thoughts must be divided, so that one duty may be discharged with his voice, and another with his eyes.

When the child shall have begun, as is the practice, to write words, it will cause no regret if we take care that he may not waste his efforts on common words, and such as perpetually occur. 35. For he may readily learn the explanations of obscure terms, which the Greeks call γλώσσαι, while some other occupation is before him, and acquire, amidst his first rudiments, a knowledge of that which would afterwards demand a special time for it. Since, too, we are still attending to small matters, I would express a wish that even the lines, which are set him for his imitation in writing, should not contain useless sentences, but such as convey some moral instruction. 36. The remembrance of such admonitions will attend him to old age, and will be of use even for the formation of his character.† It is possible for him, also, to learn the sayings of eminent men, and select passages, chiefly from the poets (for the reading of poets is more pleasing to the young), in his play-time; since memory (as I shall show in its proper place) is most necessary to an orator, and is eminently strengthened and nourished by exercise; and, at the age of which we are now speaking, and which cannot, as yet, produce anything of itself, it is almost the only faculty that can be improved by the aid of teachers. 37. It will not be improper, however, to require of boys of this age (in order that their pronunciation may be

* *Non rationis modo sed usûs quoque est.*] The sense is evidently, "it is more easily recommended than practised." *Rationis modo esse* may be applied to what is done *solâ ratione, i.e.*, in this passage at least, *solo præcepto;* and if this *usûs quoque est*, it appears that there is also need of much *usus* or practice that it may be done effectually *Spalding.* By *ratio* is understood art or method. *Rollin.*

† *Usque ad mores proficiet.*] "Ad ipsos mores pertinget, penetrabi." *Spalding.*

fuller and their speech more distinct) to roll forth, as rapidly as possible, certain words and lines of studied difficulty, composed of several syllables, and those roughly clashing together, and, as it were, rugged-sounding; the Greeks call them χαλεποί. This may seem a trifling matter to mention, but when it is neglected, many faults of pronunciation, unless they are removed in the years of youth, are fixed by incorrigible ill habit for the rest of life.

CHAPTER II.

Considerations on public and private education; public education to be preferred; alleged corruption of morals in public schools; equal corruption at home, § 1—8. Reply to the objection that a pupil receives less attention from a master in a school than from a domestic tutor, 9—16. Emulation, friendship, incitements to masters and pupils, and other advantages of public education, 17—31.

1. But let us suppose that the child now gradually increases in size, leaves the lap, and applies himself to learning in earnest. In this place, accordingly, must be considered the question, whether it be more advantageous to confine the learner at home, and within the walls of a private house, or to commit him to the large numbers of a school, and, as it were, to public teachers.* 2. The latter mode, I observe, has had the sanction of those by whom the polity of the most eminent states was settled, as well as that of the most illustrious authors.

Yet it is not to be concealed, that there are some who, from

* *Velut publicis præceptoribus.*] Respecting the meaning of the word *velut* I cannot satisfy myself, and am surprised that no commentator has made any remark upon it. I suspect, however, that Quintilian thought it necessary to qualify the word *publicis* by *velut* because these teachers could not properly be called *public*, as they did not receive salaries from the public treasury. Quintilian himself is mentioned by St. Jerome, in Eusebius's Chronicon, as the first master of a public school that received a stipend from the emperor; and perhaps, according to the mode of speaking in those times, *he* could not properly be called a public teacher, for the very reason that he received his pay, not from the public treasury, but from the emperor's privy purse. *Spalding.*

certain notions of their own, disapprove of this almost* public mode of instruction. These persons appear to be swayed chiefly by two reasons: one, that they take better precautions for the morals of the young, by avoiding a concourse of human beings of that age which is most prone to vice; (from which cause I wish it were falsely asserted that provocations to immoral conduct arise;) the other, that whoever may be the teacher, he is likely to bestow his time more liberally on one pupil, than if he has to divide it among several. 3. The first reason indeed deserves great consideration; for if it were certain that schools, though advantageous to studies, are pernicious to morals, a virtuous course of life would seem to me preferable to one even of the most distinguished eloquence. But in my opinion, the two are combined and inseparable; for I am convinced that no one can be an orator who is not a good man; and, even if any one could, I should be unwilling that he should be. On this point, therefore, I shall speak first.

4. People think that morals are corrupted in schools; for indeed they are at times corrupted; but such may be the case even at home. Many proofs of this fact may be adduced; proofs of character† having been vitiated, as well as preserved with the utmost purity, under both modes of education. It is the disposition of the individual pupil, and the care taken of him, that make the whole difference.‡ Suppose that his mind be prone to vice, suppose that there be neglect in forming and guarding his morals in early youth, seclusion would afford no less opportunity for immorality than publicity; for the private tutor may be himself of bad character; nor is intercourse with vicious slaves at all safer than that with immodest free-born youths. 5. § But if his disposition be good, and if there be not a blind and indolent negligence on the part of his parents,

* *Prope publico more.*] For this adverb *prope* it seems still more difficult to say anything satisfactory than for the preceding *velut*. Perhaps Quintilian used it because the children are not *altogether* taken from under the control of their parents, as was the case, for instance, at Sparta.

† *Opinionis.*] That is, *existimationis, famæ*. Spalding. So Regius.

‡ *Natura cujusque totum curaque distat.*] "Natura cujusque pueri et cura parentum." *Gesner.*

§ The remarks in this section seem to refer wholly to public education.

it will be possible for them to select a tutor of irreproachable character, (a matter to which the utmost attention is paid by sensible parents,) and to fix on a course of instruction of the very strictest kind; while they may at the same time place at the elbow of their son some influential friend or faithful freedman, whose constant attendance may improve even those of whom apprehensions may be entertained.

6. The remedy for this object of fear is easy. Would that we ourselves did not corrupt the morals of our children! We enervate their very infancy with luxuries. That delicacy of education, which we call fondness, weakens all the powers, both of body and mind. What luxury will he not covet in his manhood, who crawls about on purple! He cannot yet articulate his first words, when he already distinguishes scarlet, and wants his purple.* 7. We form the palate of children before we form their pronunciation. They grow up in sedan chairs; if they touch the ground, they hang by the hands of attendants supporting them on each side. We are delighted if they utter any thing immodest. Expressions which would not be tolerated even from the effeminate youths of Alexandria,† we hear from them with a smile and a kiss. Nor is this wonderful; we have taught them; they have heard such language from ourselves. 8. They see our mistresses, our male objects of affection; every dining-room rings with impure songs; things shameful to be told are objects of sight. From such practices springs habit, and afterwards nature. The unfortunate children learn these vices before they know that they are

* *Jam coccum intelligit, jam conchylium poscit.*] Spalding, with Passeratius, would read *coquum*, "he knows the cook," and take *conchylium* in the sense of "shell-fish," as in Hor. Epod. ii. 49; Sat ii. 4, 30; 8, 27, in order that there may be no recurrence to purple, after *in purpuris repit*, but that this sentence may refer wholly to eating, and be aptly followed by *ante palatum eorum, quàm os, instituimus*. All the other commentators are satisfied with *coccum*, "scarlet," and understand *conchylium* as meaning "purple;" but certainly this appears to be needless repetition. Pliny indeed distinguishes *conchylium* from *purpura*, but we are obliged to translate them both by the same word.

† *Alexandrinis—deliciis.*] All the commentators before Burmann referred these words to the general luxury of the Egyptians, or to the rites of Serapis; "but Quintilian," says that critic, "does not allude so much to the luxury of the Egyptians, as to that of the Romans, *circa pueros Alexandrinos*; see the commentators on Petronius, c. xxxi." Spalding follows Burmann.

vices; and hence, rendered effeminate and luxurious, they do not imbibe immorality from schools, but carry it themselves into schools.

9. But, it is said, one tutor will have more time for one pupil. First of all, however, nothing prevents that one pupil, whoever he may be,* from being the same with him who is taught in the school. But if the two objects cannot be united, I should still prefer the day-light of an honourable seminary to darkness and solitude; for every eminent teacher delights in a large concourse of pupils, and thinks himself worthy of a still more numerous auditory. 10. But inferior teachers, from a consciousness of their inability, do not disdain to fasten on single pupils, and to discharge the duty as it were of *pædagogi*. 11. But supposing that either interest, or friendship, or money, should secure to any parent a domestic tutor of the highest learning, and in every respect unrivalled, will he however spend the whole day on one pupil? Or can the application of any pupil be so constant as not to be sometimes wearied, like the sight of the eyes, by continued direction to one object, especially as study requires the far greater portion of time to be solitary.† 12. For the tutor does not stand by the pupil while he is writing, or learning by heart, or thinking; and when he is engaged in any of those exercises, the company of any person whatsoever is a hindrance to him. Nor does every kind of reading require at all times a prælector or interpreter; for when, if such were the case, would the knowledge of so many authors be gained? The time, therefore, during which the work as it were for the whole day may be laid out, is but short. 13. Thus the instructions which are to be given to each, may reach to many. Most of them, indeed, are of such a nature that they may be communicated to all at once with the same exertion of the voice. I say nothing of the topics‡ and declamations of the rhetoricians, at which, cer-

* *Nescio quem.*] This expression is used with a certain irony, as if Quintilian would say, "That wonderful pupil of whom you talk so much." *Spalding.* He recommends the *union* of public and private instruction. *Gesner.*

† *Plus secreti.*] That is, "plus secreti quàm conjuncti cum docente, viz., studii vel operis." *Spalding.*

‡ *Partitionibus.*] This word, says Spalding, has reference to the different topics and heads under which instruction was given by rhetoricians to their pupils He refers to Ernesti. Lex. Techn. Lat. in voce *partitio*, and Lex. Techn. Græc. v. διαίρεσις. Cic. de Orat. ii. 19.

tainly, whatever be the number of the audience, each will still carry off the whole. 14. For the voice of the teacher is not like a meal, which will not suffice for more than a certain number, but like the sun, which diffuses the same portion of light and heat to all. If a grammarian, too, discourses on the art of speaking, solves questions, explains matters of history, or illustrates poems, as many as shall hear him will profit by his instructions. 15. But, it may be said, number is an obstacle to correction and explanation.* Suppose that this be a disadvantage in a number, (for what in general† satisfies us in every respect?) we will soon compare that disadvantage with other advantages.

Yet I would not wish a boy to be sent to a place where he will be neglected. Nor should a good master encumber himself with a greater number of scholars than he can manage; and it is to be a chief object with us, also, that the master may be in every way our kind friend, and may have regard in his teaching, not so much to duty, as to affection. Thus we shall never be confounded with the multitude. 16. Nor will any master, who is in the slightest degree tinctured with literature, fail particularly to cherish that pupil in whom he shall observe application and genius, even for his own honour. But even if great schools ought to be avoided (a position to which I cannot assent, if numbers flock to a master on account of his merit), the rule is not to be carried so far that schools should be avoided altogether. It is one thing to shun schools, another to choose from them.

17. If I have now refuted the objections which are made to schools, let me next state what opinions I myself entertain. 18. First of all, let him who is to be an orator, and who must live amidst the greatest publicity, and in the full daylight of public affairs, accustom himself, from his boyhood, not to be abashed at the sight of men, nor pine in a solitary and as it were recluse way of life. The mind requires to be constantly excited and roused, while in such retirement it either languishes, and contracts rust, as it were, in the shade, or, on the other hand, becomes swollen with empty conceit, since he

* *Prælectioni.*] By *prælectio* is to be understood that instruction which a master gives to boys in lessons which they have to prepare and which can scarcely be given to two at once. *Spalding.*

† *Quid fere.*] "What, almost, satisfies us." The meaning is, that there is *hardly anything* that satisfies us. *Nihil est ab omni parte beatum.*

who compares himself to no one else, will necessarily attribute too much to his own powers. 19. Besides, when his acquirements are to be displayed in public, he is blinded at the light of the sun, and stumbles at every new object, as having learned in solitude that which is to be done in public. 20. I say nothing of friendships formed at school, which remain in full force even to old age, as if cemented with a certain religious obligation; for to have been initiated in the same studies is a not less sacred bond than to have been initiated in the same sacred rites. That sense, too, which is called common sense,* where shall a young man learn when he has separated himself from society, which is natural not to men only, but even to dumb animals? 21. Add to this, that, at home, he can learn only what is taught himself; at school, even what is taught others. 22. He will daily hear many things commended, many things corrected; the idleness of a fellow student, when reproved, will be a warning to him; the industry of any one, when commended, will be a stimulus; emulation will be excited by praise; and he will think it a disgrace to yield to his equals in age, and an honour to surpass his seniors. All these matters excite the mind; and though ambition itself be a vice,† yet it is often the parent of virtues.

23. I remember a practice that was observed by my masters, not without advantage. Having divided the boys into classes, they assigned them their order in speaking in conformity to the abilities of each; and thus each stood in the higher place to declaim according as he appeared to excel in proficiency. 24. Judgments were pronounced on the performances; and great was the strife among us for distinction; but to take the lead of the class was by far the greatest honour. Nor was sentence given on our merits only once; the thirtieth day brought the vanquished an opportunity of contending again.

* Spalding observes that the expression *sensus communis*, in the signification of our "common sense," did not come into general use till after the time of Cicero. It is found, he observes, in Horace, Sat. i. 3, 36, and Phædrus, i. 7. Much the same may be said of *ambitio*, which occurs a little below; it was not generally used for "ambition," in our sense of the word, till after Cicero's day, though it was certainly coming into use in that sense in his time.

† Ambition is not to be called a vice unless it be inordinate, or shown in a bad cause. I know not why Quintilian as well as Sallust (Cat. c. 13) should have so decidedly called it a vice. A virtuous man may be ambitious as well as a vicious man.

Thus he who was most successful, did not relax his efforts, while uneasiness incited the unsuccessful to retrieve his honour.* 25. I should be inclined to maintain, as far as I can form a judgment from what I conceive in my own mind, that this method furnished stronger incitements to the study of eloquence, than the exhortations of preceptors, the watchfulness of *pædagogi*, or the wishes of parents.

26. But as emulation is of use to those who have made some advancement in learning,† so, to those who are but beginning, and are still of tender age, to imitate their school-fellows is more pleasant than to imitate their master, for the very reason that it is more easy; for they who are learning the first rudiments‡ will scarcely dare to exalt themselves to the hope of attaining§ that eloquence which they regard as the highest; they will rather fix on what is nearest to them, as vines attached to trees gain the top by taking hold of the lower branches first. 27. This is an observation of such truth, that it is the care even of the master himself, when he has to instruct minds that are still unformed, not (if he prefer at least the useful to the showy) to overburden the weakness of his scholars, but to moderate his strength, and to let himself down to the capacity of the learner. 28. For as narrow-necked vessels reject a great quantity of the liquid that is poured upon them, but are filled by that which flows or is poured into them by degrees, so it is for us to ascertain how much the minds of boys can receive, since what is too much for their grasp of intellect will not enter their minds, as not being sufficiently expanded to admit it. 29. It is of advantage therefore for a boy to have school-fellows whom he may first imitate, and afterwards try to surpass. Thus will he gradually conceive hope of higher excellence.

To these observations I shall add, that masters themselves, when they have but one pupil at a time with them, cannot feel the same degree of energy and spirit in addressing him, as

* *Ad depellendam ignominiam.*] "To throw off dishonour."

† *Firmiores profectus.*] Why this observation is made, says Spalding, may not at once appear; but the sense is, that the more advanced pupils strive with one another, who shall most resemble the master himself, while the younger pupils rather make their older school-fellows the objects of their imitation.

‡ *Prima elementa*, by a metonymy, for *pueri prima elementa discentes*. Regius.

§ *Effingendæ.*] "Of completely forming."

when they are excited by a large number of hearers. 30. Eloquence depends in a great degree on the state of the mind, which must conceive images of objects, and transform itself, so to speak, to the nature of the things of which we discourse. Besides, the more noble and lofty a mind is, by the more powerful springs, as it were, is it moved, and accordingly is both strengthened by praise, and enlarged by effort, and is filled with joy at achieving something great. 31. But a certain secret disdain is felt at lowering the power of eloquence, acquired by so much labour, to one auditor; and the teacher is ashamed to raise his style above the level of ordinary conversation. Let any one imagine, indeed, the air of a man haranguing, or the voice of one entreating, the gesture, the pronunciation, the agitation of mind and body, the exertion, and, to mention nothing else, the fatigue, while he has but one auditor; would not he seem to be affected with something like madness? There would be no eloquence in the world, if we were to speak only with one person at a time.

CHAPTER III

Disposition and abilities of a pupil to be ascertained, § 1—3. Precociousness not desirable, 3—5. On the management of pupils, 6, 7. On relaxation and play, 8—13. On corporal punishment, 14—18.

1. Let him that is skilled in teaching, ascertain first of all, when a boy is entrusted to him, his ability and disposition. The chief symptom of ability in children is memory, of which the excellence is twofold, to receive with ease and retain with fidelity. The next symptom is imitation; for that is an indication of a teachable disposition, but with this provision, that it express merely what it is taught, and not a person's manner or walk, for instance, or whatever may be remarkable for deformity. 2. The boy who shall make it his aim to raise a laugh by his love of mimicry, will afford me no hope of good capacity; for he who is possessed of great talent will be well disposed; else I should think it not at all worse to be of a dull, than of a bad, disposition; but he who is honourably inclined will be very different from the stupid or

idle. 3. Such a pupil as I would have, will easily learn what is taught him, and will ask questions about some things, but will still rather follow than run on before. That precocious sort of talent scarcely ever comes to good fruit. 4. Such are those who do little things easily, and, impelled by impudence, show at once all that they can accomplish in such matters.* But they succeed only in what is ready to their hand; they string words together, uttering them with an intrepid countenance, not in the least discouraged by bashfulness; and do little, but do it readily. 5. There is no real power behind, or any that rests on deeply fixed roots; but they are like seeds which have been scattered on the surface of the ground and shoot up prematurely, and like grass that resembles corn, and grows yellow, with empty ears, before the time of harvest. Their efforts give pleasure, as compared with their years; but their progress comes to a stand, and our wonder diminishes.

6. When a tutor has observed these indications, let him next consider how the mind of his pupil is to be managed. Some boys are indolent, unless you stimulate them; some are indignant at being commanded; fear restrains some, and unnerves others; continued labour forms some; with others, hasty efforts succeed better. 7. Let the boy be given to me, whom praise stimulates, whom honour delights, who weeps when he is unsuccessful. His powers must be cultivated under the influence of ambition; reproach will sting him to the quick; honour will incite him; and in such a boy I shall never be apprehensive of indifference.

8. Yet some relaxation is to be allowed to all; not only because there is nothing that can bear perpetual labour, (and even those things that are without sense and life are unbent by alternate rest, as it were, in order that they may preserve their vigour,) but because application to learning depends on the will, which cannot be forced. 9. Boys, accordingly, when reinvigorated and refreshed, bring more sprightliness to their learning, and a more determined spirit, which for the most part spurns compulsion. 10. Nor will play in boys displease me; it is also a sign of vivacity; and I cannot expect

* *Illic.*] Gesner and Spalding, following Gebhard, would read *illico*, and eject *statim*; so that the passage would stand, *quicquid possunt illico ostendunt.*

that he who is always dull and spiritless will be of an eager disposition in his studies, when he is indifferent even to that excitement which is natural to his age. 11. There must however be bounds set to relaxation, lest the refusal of it beget an aversion to study, or too much indulgence in it a habit of idleness. There are some kinds of amusement, too, not unserviceable for sharpening the wits of boys, as when they contend with each other by proposing all sorts of questions in turn. 12. In their plays, also, their moral dispositions show themselves more plainly, supposing* that there is no age so tender that it may not readily learn what is right and wrong; and the tender age may best be formed at a time when it is ignorant of dissimulation, and most willingly submits to instructors; for you may break, sooner than mend, that which has hardened into deformity. 13. A child is as early as possible, therefore, to be admonished that he must do nothing too eagerly, nothing dishonestly, nothing without self-control; and we must always keep in mind the maxim of Virgil, *Adeo in teneris consuescere multum est*, "of so much importance is the acquirement of habit in the young."

14. But that boys should suffer corporal punishment, though it be a received custom, and Chrysippus makes no objection to it, I by no means approve; first, because it is a disgrace, and a punishment for slaves, and in reality (as will be evident if you imagine the age changed†) an affront; secondly, because, if a boy's disposition be so abject as not to be amended by reproof, he will be hardened, like the worst of slaves, even to stripes; and lastly, because, if one who regularly exacts his tasks be with him, there will not be the least need of any such chastisement. 15. At present, the negligence of *pædagogi* seems to be made amends for in such a way that boys‡ are not obliged to do what is right, but are punished whenever they

* The character in childhood displays itself to advantage, provided that the master knows how to turn the childish simplicity to profit, and feels convinced that the understanding of what is right may be produced and fostered even in the tenderest years. *Spalding.*

† That is, if the punishment be inflicted on a grown person. *Spalding.*

‡ *Nunc fere negligentia pædagogorum sic emendari videtur, ut pueri non faccre,* &c.] Burmann, with some other editors, has *videntur*, with *negligentiâ* in the ablative case, and thinks that the passage would be improved if we were to read *emendari videntur pueri, ut non*, &c.

have not done it. Besides, after you have coerced a boy with stripes, how will you treat him when he becomes a young man, to whom such terror cannot be held out, and by whom more difficult studies must be pursued? 16. Add to these considerations, that many things unpleasant to be mentioned, and likely afterwards to cause shame,* often happen to boys while being whipped, under the influence of pain or fear; and such shame enervates and depresses the mind, and makes them shun people's sight and feel a constant uneasiness.† 17. If, moreover, there has been too little care in choosing governors and tutors of reputable character,‡ I am ashamed to say how scandalously unworthy men may abuse their privilege of punishing,§ and what opportunity also the terror of the unhappy children may sometimes afford to others.‖ I will not dwell upon this point; what is already understood is more than enough. It will be sufficient therefore to intimate, that no man should be allowed too much authority over an age so weak and so unable to resist ill-treatment.

18. I will now proceed to show in what studies he who is to be so trained that he may become an orator, must be instructed, and which of them must be commenced at each particular period of youth.

CHAPTER IV.

Of grammar, sect. 1—6. Remarks on certain letters and derivations of words, 7—12. Changes in words, 13—17. Of the parts of speech, 18—21. Some observations on nouns and verbs, 22—29.

1. In regard to the boy who has attained facility in reading and writing, the next object is instruction from the gram-

* *Præsertim si nates præbere cogantur.* Burmann.

† *Ipsius lucis fugam et tædium dictat.*] "Induces a shunning of the very light, and an uneasiness."

‡ *Si minor in diligendis custodum et præceptorum moribus fuit.*] "If there has been too little care in making choice of the morals of guardians and preceptors."

§ *In quæ probra nefandi homines—abutantur.*] Intelligit stupra, quæ sæpe pueris inferendi hinc occasio præbetur; quod apertè non voluit efferre, sed intelligentibus pauca satis. Ita *probrum* pro impudicitiâ et stupro sæpe Suetonius. Vid. Cæs. 43; Aug. 65, et alibi. *Burmann.*

‖ Others besides the *pædagogi.*

marians.* Nor is it of importance whether I speak of the Greek or Latin grammarian, though I am inclined to think that the Greek should take the precedence. 2. Both have the same method. This profession, then, distinguished as it is, most compendiously, into two parts, the art *of speaking correctly*, and the *illustration of the poets*, carries more beneath the surface than it shows on its front. 3. For not only is the *art of writing* combined with that of speaking, but *correct reading* also precedes illustration, and with all these is joined the exercise of *judgment*, which the old grammarians,† indeed, used with such severity, that they not only allowed themselves to distinguish certain verses with a particular mark of censure,‡ and to remove, as spurious, certain books which had been inscribed with false titles, from their sets, but even brought some authors within their canon, and excluded others altogether from classification.§ 4. Nor is it sufficient to have read the poets only; every class of writers must be studied, not simply for matter, but for words, which often receive their authority from writers. Nor can grammar be complete without a knowledge of music,‖ since the grammarian has to speak¶ of metre and rhythm; nor if he is ignorant of astronomy, can he under-

* That is, the language masters, teachers of languages and literature, Latin or Greek, as is evident from what is afterwards said of them.

† He means especially those of Alexandria, of whom Villoison has treated, in our day, in his Prolegomena to the Iliad, and F. A. Wolf, also, in his Prolegomena to Homer; both with great erudition. *Spalding.*

‡ The critics used two marks, the *asterisk*, to signify that something was wanting; the *obelisk*, to indicate that something had been interpolated or was faulty. *Turnebus.*

§ *Auctores alios in ordinem redegerint, alios omnino exemerint numero.*] There has been much dispute about the meaning of these words. I follow Spalding, who adopts the opinion of Ruhnken, that *redigere in ordinem* and *eximere è numero* are expressions equivalent to the Greek words *ἐγκρίνειν* and *ἐκκρίνειν*. That this is the right interpretation will now scarcely be doubted. Regius, and others of the older critics, thought that *redigere in ordinem* signified "to condemn" (as *cogere in ordinem*, "to reduce to the ranks," in Livy and other writers, with reference to a tribune or centurion), and *eximere è numero*, "to select from the common herd." The question is discussed at some length by Spalding.

‖ So far, at least, as to acquire a correct ear for rhythm in prose, and for metre in poetry.

¶ *Ei—dicendum sit.*] *Ei, i.e. grammaticæ*, the thing for the person. *Ignara*, too, below, refers to *grammatica.*

stand the poets, who, to say nothing of other matters, so often allude to the rising and setting of the stars in marking the seasons; nor must he be unacquainted with philosophy, both on account of numbers of passages, in almost all poems, drawn from the most abstruse subtleties of physical investigation, and also on account of Empedocles among the Greeks, and Varro and Lucretius among the Latins, who have committed the precepts of philosophy to verse. 5. The grammarian has also need of no small portion of eloquence, that he may speak aptly and fluently on each of those subjects which are here mentioned. Those therefore are by no means to be regarded who deride this science as trifling and empty, for unless it lays a sure foundation for the future orator, whatever superstructure you raise will fall; it is a science which is necessary to the young, pleasing to the old, and an agreeable companion in retirement, and which alone, of all departments of learning, has in it more service than show.

6. Let no man, therefore, look down on the elements of grammar as small matters; not because it requires great labour to distinguish consonants from vowels, and to divide them into the proper number of semivowels and mutes, but because, to those entering the recesses, as it were, of this temple, there will appear much subtlety on points, which may not only sharpen the wits of boys, but may exercise even the deepest erudition and knowledge. 7. Is it in the power of every ear to distinguish accurately the sounds of letters? No more, assuredly, than to distinguish the sounds of musical strings. But all grammarians will at least descend to the discussion of such curious points as these: whether any necessary letters be wanting to us, not indeed when we write Greek, for then we borrow two letters* from the Greeks, but, properly, in Latin: 8. as in these words, *seruus* et *uulgus*, the Æolic digamma† is required; and there is a certain sound of a letter

* Y and Z.

† When the Romans pronounced the consonant *v*, they did not distinguish it from the vowel, but designated both by the character *u*. In writing such words as *servus* and *vulgus*, therefore, the want of a distinct character for each was greatly felt, the same letter being used twice, as *seruus*, *uulgus*, with two different sounds. See Cassiodorus de Orthographiâ, Putsch. p. 2282. The sound of the digamma was, however, that of the English *w*, when it commenced a syllable, as Walker, in opposition to Lowth, maintains in his Pronouncing Dictionary.

between *u* and *i*, for we do not pronounce *optimum* like *opimum*;* in *here*, too, neither *e* nor *i* is distinctly heard:† whether, again, other letters are redundant (besides the mark of aspiration, which, if it be necessary, requires also a contrary mark‡), as *k*, which is itself the mark of certain names,§ and *q* (similar to which in sound and shape, except that *q* is slightly warped by our writers, koppa‖ now remains among the Greeks, though only in the list of numbers), as well as *x*, the last of our letters, which indeed we might have done without,¶ if we had not sought it. 10. With regard to vowels, too, it is the business of the grammarian to see whether custom has taken any for consonants, since *iam* is written as *tam*, and *uos* as *cos*.** But vowels which are joined, as vowels, make either *one* long

p. 3, sect. 9. Claudius Cæsar attempted to bring the digamma into use, but *old custom was too strong for him*, as Priscian says, Putsch. p. 546. See Tacit. Ann. xi. 14; Dionys. Hal. Antiq. Rom. p. 16, ed Sylb.; Foster on Accent and Quantity, p. 122. *Spalding.*

* We do not pronounce the letter *i* so fully in *optimum* as in *opimum*, but, as it were, with a duller sound, so as to make it nearly the same with *u*, *optumum*. *Spalding.*

† Hence it appears why the poets used either *here* or *heri* as it suited their purpose. *Spalding.* *Here* is used by Juvenal, iii. 23, and by Horace, Sat. ii. 8, 2. From c. 7, sect. 22, it appears that *here* was commonly used in Quintilian's time.

‡ The old Latins, like the Greeks, put the mark of aspiration over the vowels, as we ourselves see in old manuscripts, in which we read *àvium* and *òdie*, and as appears from this passage of Quintilian, for, says he, if a sign of aspiration be necessary, a sign of the absence of aspiration is also necessary. *Camerarius.*

§ *Quæ et ipsa quorundam nominum nota est.*] Why Quintilian adds this remark, especially with *et ipsa*, is not altogether clear. I suppose that he alludes, however, to the letter *h*; for as *h* was not admitted by some to be a letter, but was called merely a mark or sign, so Quintilian seems to think that *k* might rather be regarded as a distinction of certain particular words than as a letter of the alphabet. *Spalding.* *Kæso* and *Kalendæ* were two of the words for which it stood. Priscian says that *k* and *q* were not necessary to the Romans, as they had *c*. *Turnebus.* See also Velius Longus apud Putsch. p. 2218.

‖ Quintilian signifies that, in the old Greek alphabet, Koppa, the Kuph of the Hebrews, was counted as one of the letters. It was variously formed, and stood for the number ninety. *Spalding.* "Slightly warped," *paulum obliquatur*, Gesner and Spalding understand of the sinuous tail of the Roman *q*.

¶ Before *x* was introduced into the Roman alphabet, *rex* was written *regs*, and *pix*, *pics*. Max. Victorin. apud Putsch. p. 1945.

** That is, *iam* is as much a monosyllable, in pronunciation, as *tam*, and *uos*, *i.e. vos*, as *cos*. For *uos*, Burmann and Gesner read *quos*.

vowel,* as the ancients wrote, who used the doubling of them instead of the circumflex accent,† or *two;* though perhaps some one may suppose that a syllable may be formed even of three vowels; but this cannot be the case, unless some of them do the duty of consonants. 11. The grammarian will also inquire how two vowels only have the power of uniting with each other,‡ when none of the consonants can *break* any letter but another consonant.§ But the letter *i* unites with itself; for *coniicit* is from *iacit*,‖ and so does *u*, as *uulgus* and *seruus* are now written. Let the grammarian also know that Cicero¶ was inclined to write *aiio* and *Maiia* with a double *i*, and, if this be done, the one *i* will be joined to the other as a consonant. 12. Let the boy, therefore, learn what is peculiar in letters, what is common, and what relationship each has to each, and let him not wonder why *scabellum*** is formed from *scamnum*, or

* The sense of this passage, says Spalding, is as follows: two vowels coming together form either one vowel, as *vehemens*, or two, as *aut;* for three vowels are never joined to form a syllable unless one of them discharge the duty of a consonant, as *vae*.

† As *videere* instead of *vidêre*.

‡ The same two vowels are sometimes so united that the one melts or merges into the other; they no longer preserve the force of two vowels, but one assumes the nature of a consonant. Thus, *coniicit* is not a word of four syllables, but only of three; yet the second is not lengthened, as the first *i* becomes in reality a consonant. *Gesner*.

§ The case is different with regard to the same two consonants coming together. In the word *addit*, for example, both *d*'s retain their full force, and form a long syllable with the vowel *a*. But one consonant sometimes "breaks" another different from itself; thus liquids "break" mutes, *i.e.* coalesce with them in such a manner as to form one sound, and on that account do not necessarily lengthen a short vowel preceding them. This passage is fully illustrated by another of Quintilian, xii. 10, 29, where the letter *f*, in the very word *frango*, is said to break a consonant. *Gesner*. In this example, however, it is not the liquid that is said to "break" or weaken the mute, but the mute that is said to break the liquid; thus, less will be heard of the sound of the *r* if *f* be put before it than if no letter precede it. In like manner, too, the sound of the *f* will be less full when *r* follows it than if no letter intervened between it and the vowel. The consonants, therefore, mutually "break" or weaken each other.

‖ He mentions the derivation, as Spalding justly remarks, to show that there were really two *i*'s in *coniicit*, the *a* of *iacit* being changed into *i*.

¶ The commentators have sought in vain for any such remark in the extant works of Cicero.

** For *scamellum*, as *hybernus* for *hymernus*.

why *bipennis*, an axe with an edge each way, is formed from *pinna*, which means something sharp; that he may not follow the error of those, who, because they think that this word is from *two wings*, would have the wings of birds called *pinnæ*.*

13. Nor let him know those changes only which declension† and prepositions introduce, as *secat secuit, cadit excidit, cædit excidit, calcat exculcat;* (so *lotus* from *lavare*, whence also *illotus;* and there are a thousand other similar derivations;) but also what alterations have taken place, even in nominative cases, through lapse of time; for, as *Valesii* and *Fusii* have passed into *Valerii* and *Furii*, so *arbos, labos, vapos*, as well as *clamos* and *lases*,‡ have had their day. 14. This very letter *s*, too, which has been excluded from these words, has itself, in some other words, succeeded to the place of another letter; for instead of *mersare* and *pulsare*, they once said *mertare* and *pultare*. They also said *fordeum* and *fœdus*, using, instead of the aspiration, a letter similar to *vau;* for the Greeks, on the other hand, are accustomed to aspirate,§ whence Cicero, in his oration for Fundanius, laughs at a witness who could not sound the first letter of that name. 15. But we have also, at times, admitted *b* into the place of other letters, whence *Burrus* and *Bruges*.|| and *Belena*. The same letter moreover has made *bellum* out of *duellum*, whence some have ventured to call the *Duellii, Bellii*.¶ 16. Why need I speak of *stlocus* and *stlites*?** Why need I men-

* Quintilian seems to think that the wings of birds should never be called *pinnæ;* but this was a rule not generally observed. Vossius, looking to this passage of Quintilian, supposes that *pinna* was derived from an old adjective *pinnus*, acute.

† Used of verbs as well as of nouns.

‡ For *lares*.

§ The Greeks used the aspirated *f*, or ϕ; and the Greek witness could not get rid of the aspirate in attempting to pronounce Fundanius.

|| For *Pyrrhus* and *Phryges*, see Cic. Orat. c. 48 Regius and others suppose that *Belena* is for *Helena;* "but," says Spalding, "there is a more ingenious conjecture of Cannegieter, which perhaps comes nearer to the truth, in his dissertation on Avianus, p. 257; he thinks that the rustic tribe *Velina*, mentioned by Cicero, Horace, and Persius, is meant, as *Boltinia* is used for *Voltinia*, also the name of a tribe, in one of Gruter's inscriptions."

¶ See Cic. Orat. c. 45. Of that family was the Duellius, or, as generally written, Duillius, who gained the first victory by sea over the Carthaginians.

** We read *stlites* for *lites* on old marbles. That *stlocus* was used for

tion that there is a certain relationship of the letter *t* to *d*? Hence it is far from surprising if, on the old buildings of our city, and well-known temples, is read *Alexanter* and *Cassantra*. Why should I specify that *o* and *u* are interchanged? so that *Hecoba* and *notrix*, *Culchides* and *Pulyxena*, were used, and, that this may not be noticed in Greek words only, *dederont* and *probaveront*. So Ὀδυσσεύς, whom the Æolians made Οὐδυσσεύς, was turned into *Ulysses* 17. Was not *e*, too, put in the place of *i*, as *Menerva*, *leber*, *magester*, and *Diiove* and *Veiove* for *Diiovi* and *Veiovi*? But it is enough for me to point to the subject; for I do not teach, but admonish those who are to teach. The attention of the learner will then be transferred to syllables, on which I shall make a few remarks under the head of orthography.

He, whom this matter shall concern, will then understand how many parts of speech there are, and what they are; though as to their number writers are by no means agreed. 18. For the more ancient, among whom were Aristotle and Theodectes, said that there were only *verbs*, *nouns*, and *convinctions*, because, that is to say, they judged that the force of language was in verbs, and the matter of it in nouns (since the one is what we speak, and the other that of which we speak), and that the union of words lay in convinctions, which, I know, are by most writers called *conjunctions*, but the other term seems to be a more exact translation of συνδεσμός. 19. By the philosophers, and chiefly the Stoics, the number was gradually increased; to the convinctions were first added *articles*, then *prepositions;* to nouns was added the *appellation*, next the *pronoun*, and afterwards the *participle*, partaking of the nature of the verb; to verbs themselves were joined *adverbs*. Our language does not require *articles*, and they are therefore divided among other parts of speech.* To the parts of speech already

locus is shown by Festus, who also mentions *stlata*, a kind of boat, from *latus*, broad. *Spalding.*

* *In alias partes orationis sparguntur.*] An extraordinary mode of speaking, as Spalding observes. What the Greeks expressed by means of the article, says Quintilian, was expressed among the Latins by the aid, sometimes of one part of speech, sometimes of another. But the chief instrument for supplying the want of the article was the pronoun *ille;* as, in this chapter, sect. 11, *ab illo* "jacit," which the Greeks would have expressed by *ἀπὸ τοῦ jacit.* Gesner observes, too, that *alter* was equivalent to ὁ ἄλλος, "*the* other," while *alius* meant simply "another."

mentioned was added the interjection. 20. Other writers, however, certainly of competent judgment, have made eight parts of speech, as Aristarchus, and Palæmon* in our own day, who have included the *vocable*, or *appellation*, under the *name* or *noun*, as if a species of it.† But those who make the *noun* one, and the *vocable* another, reckon nine. But there were some, nevertheless, who even distinguished the *vocable* from the *appellation*, so that the *vocable* should signify any substance manifest to the sight and touch, as *a house, a bed;* the *appellation*, that to which one or both of these properties should be wanting, as *the wind, heaven, God, virtue.* They added also the *asseveration*, as *heu*, "alas!" and the *attrectation*, as *fasceatim*, "in bundles;"‡ distinctions which are not approved by me. 21. Whether προσηγορία should be translated by *vocable* or *appellation*, and whether it should be comprehended under the noun or not, are questions on which, as being of little importance, I leave it free to others to form an opinion.

22. Let boys in the first place learn to decline nouns and conjugate verbs; for otherwise they will never arrive at the understanding of what is to follow; an admonition which it would be superfluous to give, were it not that most teachers, through ostentatious haste, begin where they ought to end, and, while they wish to show off their pupils in matters of greater display, retard their progress by attempting to shorten the road. 23. But if a teacher has sufficient learning, and (what is often found not less wanting) be willing to teach what he has learned, he will not be content with stating that there are three genders in nouns, and specifying what nouns have two or all the three genders. 24. Nor shall I hastily deem that tutor diligent, who shall have shown that there are irregular

* A grammarian at Rome in the reigns of Tiberius and Claudius. Suetonius on Eminent Grammarians, c. 23; Juvenal, vi. 453; vii. 215. A few relics of his writings may be seen in the collection of the Grammarians by Putsch.

† *Tanquam species ejus.*] How a nominative can be used here is scarcely apparent; but it cannot be an accusative plural, as the *vocable* and *appellation* are but one thing. Gesner would substitute *specimen.* I think the most simple mode of correction is to write *speciem.* Spalding.

‡ *Heu* is an asseveration, inasmuch as it strengthens the lamentations of him who utters it. *Fasceatim* signifies attrectation or handling, because we use such adverbs when we take hold of or handle a number of things in our hand or imaginati n. *Spalding.*

nouns, called *epicene*, in which both genders are implied under one, or nouns which, under a feminine termination, signify males, or, with a neuter termination, denote females; as *Murœna* and *Glycerium*. 25. A penetrating and acute teacher will search into a thousand origins of names;* derivations which have produced the names *Rufus*, "red," and *Longus*, "long," from personal peculiarities; (among which will be some of rather obscure etymology, as *Sulla*, *Burrhus*, *Galba*, *Plancus*, *Pansa*, *Scaurus*, and others of the same kind;) some also from accidents of birth, as *Agrippa*, *Opiter*, *Cordus*, *Posthumus* some from occurrences after birth, as *Vopiscus;* while others as *Cotta*, *Scipio*, *Lænas*, *Seranus*, spring from various causes 26. We may also find people, places, and many other things among the origins of names. That sort of names among slaves which was taken from their masters, whence *Marcipores* and *Publipores*,† has fallen into disuse. Let the tutor consider, also, whether there is not among the Greeks ground for a sixth case, and among us even for a seventh; for when I say *hastâ percussi*, "I have struck with a spear," I do not express the sense of an ablative case,‡ nor, if I say the same thing in Greek, that of a dative.§

27. As to verbs, who is so ignorant as not to know their kinds, qualities, persons, and numbers? Those things belong to the reading school, and to the lower departments of instruction. But such points as are not determined by inflexion, will puzzle some people; for it may be doubted, as to certain words, whether they are *participles*, or nouns formed from the verb, as *lectus*, *sapiens*. 28. Some verbs look like nouns, as *fraudator*, *nutritor*. Is not the verb in *Itur in antiquam silvam* of a peculiar nature, for what beginning of it can you find?‖ *Fletur* is similar to it. We understand the passive sometimes in one way, as,

Panditur interea domus omnipotentis Olympi;

* *Scrutabitur mille præceptor—origines nominum.*] Burmann would read *ille præceptor*, not liking the expression *mille origines*. The derivations of the proper names that follow may be ascertained from the Latin lexicons.

† *Marcipor* for *Marci puer; Publipor* for *Publii puer*. See Priscian, p. 700, ed. Putsch.

‡ That is, of a case of taking away; *casus auferendi*.

§ Of the case of giving; *dandi casus*.

‖ That is, what first person singular; *eor* not being in use.

sometimes in another, as,

Totis
Usque adeò turbatur agris.

There is also a third way,* as *urbs habitatur*, whence likewise *campus curritur*, *mare navigatur*. 29. *Pransus* also and *potus* have a different signification from that which their form indicates. I need hardly add, that many verbs do not go through the whole course of conjugation. Some, too, undergo a change, as *fero* in the preterperfect; some are expressed only in the form of the third person, as *licet*, *piget;* and some bear a resemblance to *nouns passing into adverbs;* for, as we say *noctu* and *diu*, so we say *dictu* and *factu;* since these words are indeed participial, though not like *dicto* and *facto*.

CHAPTER V.

Necessity of correctness in speaking and writing, § 1. On single words, 2, 3. Choice of words, 4. Barbarisms, 5—10. Barbarisms in poets and other writers, 11—17. Faults in pronunciation, 17, 18. On the aspiration, 19—21. The accents, 22—24. On ending a word with an acute accent, 25—30. Legitimate accentuation, 31—33. On the solecism, 34—37. Different kinds of solecisms, 38—41. No dual number in Latin, 42—44. Solecisms in various parts of speech, 45—51. Figures of speech, 52—54. On foreign words, 55—57. Greek words, 58—64. Compound words, 65—70. Words proper, metaphorical, common, new, 71, 72.

1. SINCE all language has three kinds of excellence, to be *correct*, *perspicuous*, and *elegant*, (for to speak *with propriety*, which is its highest quality, most writers include under elegance,) and the same number of faults, which are the opposites of the excellences just mentioned, let the grammarian consider well the rules for correctness which constitute the first part of grammar. 2. These rules are required to be observed *verbis aut singulis aut pluribus*, in regard to *one* or *more* words. The word *verbum* I wish to be here understood in a general sense, for it has two significations: the one, which includes all words of which language is composed, as in the verse of Horace,

Verbaque provisam rem non invita sequentur,

"And words, not unwilling, will follow provided matter;" the

* Namely, when neuters and intransitives, which properly have no passive voice, assume the nature of transitives, by being joined with a nominative case in the passive. *Spalding.*

other, under which is comprehended only one part of speech, as *lego*, *scribo;* to avoid which ambiguity some have preferred the terms *voces*, *dictiones*, *locutiones*. 3. Words, considered singly, are either *our own*, or *foreign*, *simple* or *compound*, *proper* or *metaphorical*, *in common use* or *newly invented*.

A word taken singly is oftener objectionable than faultless;* for however we may express anything with propriety, elegance, and sublimity, none of these qualities arise from anything but the connection and order of the discourse; since we commend single words merely as being well suited to the matter. The only good quality, which can be remarked in them, is their *vocalitas*, so to speak, called *εὐφωνία*, "euphony;" which depends upon selection,† when of two words, which have the same signification, and are of equal force, we make choice of the one that has the better sound.

5. First of all, let the offensiveness of *barbarisms* and *solecisms* be put away. But as these faults are sometimes excused, either from custom, or authority, or, perhaps, from their nearness to beauties, (for it is often difficult to distinguish *faults* from *figures* of speech,) let the grammarian, that so uncertain a subject of observation may deceive no one, give his earnest attention to that nice discrimination, of which we shall speak more fully in the part where we shall have to treat of figures of speech.‡ 6. Meanwhile, let an offence committed in regard to a single word, be called a *barbarism*.

But some one may stop me with the remark, what is there here worthy of the promise of so great a work? Or who does not know that barbarisms are committed, some in *writing*, others in *speaking?* (because what is *written* incorrectly must also be *spoken* incorrectly; though he who speaks incorrectly may not necessarily make mistakes in writing;) the first sort being caused by *addition*, *curtailment*, *substitution*, or *transposition;* the second by *separation* or *confusion* of sylla-

* Words, considered simply in themselves, may have the one excellence which Quintilian calls euphony. But they may have a great many faults; for they may be disgusting, mean, low, or barbarous. *Turnebus*. The text is, *Uni verbo vitium sæpius quàm virtus inest;* for which Gedoyne gives, "Le plus souvent la qualité d'un mot, pris en lui même, est purement négative."

† *Cujus in eo delectus est, ut.*] "The choice for which lies in this, that." No commentator expresses any suspicion of the soundness of the text.

‡ B. ix. c. 1—3.

bles, *aspiration*, or other faults of *sound*? 7. But though these may be small matters, boys are still to be taught, and we put grammarians in mind of their duty. If any one of them, however, shall not be sufficiently accomplished, but shall have just entered the vestibule of the art, he will have to confine himself within those rules which are published in the little manuals of professors; the more learned will add many other instructions, the very first of which will be this, that we understand *barbarisms* as being of several kinds. 8. One, with reference to country, such as is committed when a person inserts an *African* or *Spanish* term in Latin composition; as when the iron ring, with which wheels are bound, is called *canthus*,* though Persius uses this as a received word; as when Catullus† got the word *ploxenum*, "a box," on the banks of the Po; and in the speech of Labienus, (if it be not rather the speech of Cornelius Gallus,)‡ the word *casnar*, "a parasite," is brought from Gaul§ against Pollio; as to *mastruca*, "a shaggy garment," which is a Sardinian word, Cicero‖ has used it purposely in jest. 9. Another kind of barbarism is that which we regard as proceeding from the natural disposition, when he, by whom anything has been uttered insolently, or threateningly, or cruelly, is said to have spoken *like a barbarian*. 10. The third kind of barbarism is that of which examples are everywhere abundant, and which every one can form for himself, by *adding* a letter or syllable to any word he pleases, or *taking one away*,

* Quintilian evidently signifies that *canthus* is a Spanish word, though the Greeks claim it as theirs. *Regius.* Turnebus says that it occurs in the Iliad, but is mistaken, for it is not to be found in Homer at all. Casaubon, on Persius, v. 71, where it occurs, observes that it is used by no Greek writer except the grammarians. Burmann supposes the word to be of Celtic origin.

† lxxxix. 5, 6: *Gingivas verò ploxeni habet veteris.*

‡ Of this speech I find no mention elsewhere. Labienus (the son probably of him who deserted the party of Julius Cæsar, A.U.C. 703), and Cornelius Gallus, both enemies of Mark Antony, may both have composed severe speeches against his friend Pollio. *Spalding.*

§ It appears strange that Quintilian, in bringing this word from Gaul, not only differs from Varro, who, de L. L. i. 6, attributes it to the Osci,-but does not even allude to a writer of so high authority on such a point. Festus agrees with Varro respecting the origin of the word. *Spalding.*

‖ In his oration for Scaurus, of which only some fragments remain. See Ernesti's edition, vol. iv. p. 1057. He also uses the epithet *mastruccatus* de Provinciis consularibus, c. 7. *Spalding.*

or *substituting one for another*, or *putting one in a place where it is not right for it to be.* 11. But some grammarians, to make a show of learning, are accustomed, for the most part, to take examples of these from the poets, and find fault with the authors whom they interpret. A boy ought to know, however, that such forms of speech, in writers of poetry, are considered as deserving of excuse, or even of praise; and learners must be taught less common instances. 12. Thus Tinca of Placentia* (if we believe Hortensius, who finds fault with him) was guilty of two barbarisms in one word, saying *precula* instead of *pergula;* first, by the change of a letter, putting *c* for *g*, and secondly, by transposition, placing *r* before the preceding *e*. But Ennius, when committing a like double fault, by saying *Metieo Fufetieo*,† is defended on the ground of poetic licence. 13. In prose, too, there are certain received changes; for Cicero ‡ speaks of an army of *Canopitæ*, though the people of the city call it *Canobus*; and many writers have authorized *Tharsomenus* for *Thrasymenus*, § although there is a transposition in it. Other words suffer similar treatment; for if *assentior*, "I assent," be thought the proper way of spelling that word, Sisenna has said *assentio*, and many have followed him and analogy; or, if *assentio* be deemed the right method, the other form, *assentior*, is supported by common practice. 14. Yet the prim and dull || teacher will suppose that there is either curtailment in the one case, or addition in the other. I need hardly add that some forms, which, taken singly, are doubtless faulty, are used in composition without blame. 15. For *dua*, *tre*, and *pondo*, are barbarisms of discordant gender; yet the compounds *duapondo*, "two pounds," and *trepondo*, "three pounds," have ¶ been used by

* He is mentioned by Cicero, Brut. c. 46. *Spalding.*

† If the poems of Ennius were extant, the two faults of which he is guilty might be discovered. *Regius.* But as Ennius's works have perished, that discovery is not likely to be made. We see that *e* is inserted, but what the other irregularity is we know not. Spalding bestows some discussion on the question, but settles nothing.

‡ I have not yet found the passage, nor do I think that it exists among the writings of Cicero now extant But the change of *b* into *p* in Canobus was adopted by almost all the Latin writers. *Spalding.*

§ The name of the well-known lake at which Hannibal defeated the Romans.

|| *Pexus pinguisque.*] At once conceited and stupid.

¶ Equivalent to *duas* and *tres* (libras) *pondo*, two and three pounds in weight, *duas* and *tres* being feminine and *pondo* neuter.

everybody down to our own times; and Messala maintains that they are used with propriety. 16. It may perhaps seem absurd to say that a barbarism, which is incorrectness in a single word, may be committed in number and gender, like a solecism; yet *scala*, "stairs," and *scopa*, "a broom," in the singular, and *hordea*,* "barley," and *mulsa*, "mead," in the plural, as they are attended with no change, withdrawal, or addition of letters, are objectionable only because plurals are expressed in the singular, and singulars in the plural; and those who have used *gladia*, "swords," have committed a fault in gender. 17. But this point, too,† I am satisfied with merely noticing, that I myself may not appear to have added another question‡ to a branch of study already perplexed through the fault of certain obstinate grammarians.

Faults which are committed in *speaking* require more sagacity in criticising them, because examples of them cannot be given from writing, except when they have occurred in verses, as the division of the diphthong in *Europaï*, and the irregularity of the opposite kind, which the Greeks call *synæresis* and *synalæpha*, and we *conflexio*, "combination," as in the verse in Publius Varro,§

Quum te flagranti dejectum fulmine Phœton;

for, if it were prose, it would be possible to enunciate those letters by their proper syllables. Those peculiarities, also, which occur in quantity, whether when a short syllable is made long, as in *Italiam fato profugus*,‖ or when a long one is made short, as in *Unius ob noxam et furias*, you would not remark except in verse; and even in verse they are not to be

* *Scalæ* was sometimes used in the singular; *scopæ* scarcely ever. *Hordea* is used by Virgil. Why it should be wrong to use *mulsa* in the plural more than *vina* does not appear, *mulsum* being in fact an adjective or participle with *vinum* understood.

† *Quoque.*] This word has reference to i. 4, 17, where almost the same words are used at the end of what is said about letters. *Spalding.*

‡ About barbarism, namely, in number. *Spalding.*

§ Publius Terentius Varro, called Atacinus, from the place in Gallia Narbonensis where he was born. He was contemporary with Marcus Terentius Varro, so much celebrated for his learning. *Spalding.*

‖ Æn. i. 6. When the metre allowed, Virgil generally shortened the first syllable in *Italus*; and it was right that he should do so, if the word is really derived from *vitulus*. *Spalding.*

regarded as faults. 19. Those which are committed in sound, are judged only by the ear; though as to the aspirate, whether it be added or retrenched, in variation from common practice, it may be a question with us whether it be a fault in writing; if *h* indeed be a letter, and not merely a mark, as to which point opinion has often changed with time. 20. The ancients used it very sparingly even before vowels, as they said *œdos* and *ircos;* and it was long afterwards withheld from conjunction with consonants, as in *Graccus* and *triumpus.* But suddenly an excessive use of it became prevalent, so that *choronæ, chenturiones, prœchones,* are still to be seen in certain inscriptions; on which practice there is a well-known epigram of Catullus.* Hence there remain, even to our times, *vehementer, conprehendere,* and *mihi.* Among the ancient writers, also, especially those of tragedy, we find in old copies *mehe* for *me.*

22. Still more difficult is the marking of faults in respect to the *tenores,* "tones," (which I find called by the old writers *tonores,* as if, forsooth, the word were derived from the Greeks, who call them τόνοι,) or *accents,* which the Greeks call προσωδίαι when the acute is put for the grave, or the grave for the acute: as if, in the word *Camillus,* the first syllable should receive the acute accent; 23. or if the grave is put for the circumflex, as when the first syllable of Cethegus has the acute, for thus the quantity of the middle syllable is altered;† or if the circumflex is put for the grave, as when the second syllable is circumflexed in * * *,‡ by contracting which from two syllables

* Epigr. lxxviii. de *Ario* sive *Hirrio.*

† The quantity of the middle syllable would be altered in both words; instead of *Cămīllus, Cēthēgus,* we should have *Cāmīllus, Cēthĕgus, i.e. Cēthĕgus.*

‡ The text has *apice circumductâ sequente,* but Spalding very happily conjectures that *apice* is a mere corruption of the word which Quintilian gave as an example, and which we can now scarcely hope to discover. Spalding would read *Appî,* if it were certain that the use of such genitives in *î* (not *ii*) had been altogether laid aside in the time of Quintilian. "The genitive of words in *ius* and *ium* was not formed in *ii* in the best age of the Latin language, but in *i* alone, *e.g. fili, ingeni, Tulli.* So at least it was pronounced in the poets before and during the Augustan age; Bentley, Ter. Andr. ii. 1, 20. Of the poets Propertius first used the form in *ii,* which is common in Ovid and later poets. It was probably pronounced *i* in prose, even if written *ii.* It is impossible to decide on the orthography from the fluctuation of

into one, and then circumflexing it, people commit two errors. 24. But this happens far more frequently in Greek words, as *Atreus*, which, when I was young, the most learned old men used to pronounce with an acute on the first syllable,* so that the second was necessarily grave, as was also that of *Tereus* and *Nereus*. Such have been the rules respecting accents. 25. But I am quite aware that certain learned men, and some grammarians also, teach and speak in such a manner as to terminate a word at times with an acute sound, for the sake of preserving certain distinctions in words, as in *circum* in these lines,

Quæ circum litora, circum
Piscosos scopulos,

lest, if they make the second syllable in *circum* grave, a *circus* might seem to be meant, not a *circuit*. 26. *Quantum* and *quale*, also, when asking a question, they conclude with a grave accent; when making a comparison, with an acute; a practice, however, which they observe almost only in adverbs and pronouns; in other words they follow the old custom. 27. To me it appears to make a difference, that in these phrases we join the words; for when I say *circum litora*, I enunciate the words as one, without making any distinction between them; and thus one syllable only, as in a single word, is acute. The same is the case in this hemistich,

Trojæ qui primus ab oris.†

28. It sometimes happens, too, that the law of the metre alters the accent: as,

Pecudes, pictæque volucres;

the MSS. *Mancipi* remained in common use." *Zumpt's Latin Grammar*, sect. ix.

* "So far," says Spalding, "is clear, that they made the first syllable acute; but whether they pronounced the rest of the word as two syllables, or as one, is uncertain." He is inclined, however, to think that they made three syllables, because Quintilian calls the next syllable the "second," whereas, if there had been but two, he would probably have said the *last*. Yet we cannot think this argument of much weight when we see that Quintilian speaks of the "second" syllable of *circum* in sect. 25. The genitive, from what Quintilian says, they appear to have contracted into two syllables. The poets contracted or not, in all the cases, as they pleased; but Quintilian is speaking of pronunciation in prose.

† *Qui*, in *qui primus*, loses its accent by almost coalescing with the

For I shall pronounce *volucres* with an acute on the middle syllable, because, though it be short by nature, it is long by position, that it may not form an iambus,* which a heroic verse does not admit. 29. But these words, taken separately,† will not vary from the rule; or, if custom ‡ shall triumph, the old law of the language will be abolished; the observation of which law is more difficult among the Greeks, (because they have several modes of speaking, which they call dialects, and because what is wrong in one is sometimes right in another;§) but among us the principle of accentuation is very simple. 30. For in every word the *acuted* syllable is confined within the number of three syllables, || whether those three be the only syllables in the word, or the three last; and of these, the acuted syllable is either the next, or next but one, to the last. Of the three syllables of which I am speaking, moreover, the middle one will be long, or acute, or circumflex; a short syllable in that position will, of course, have a grave sound, and will accordingly acute the one that stands before it, that is, the third from the end. 31. But in every word there is an acute syllable, though never more than one; nor is that one ever the last, and consequently in dissyllables it is the first. Besides there is never in the same word one syllable circumflexed and another acuted, for the same syllable that is circumflexed is also acuted;¶ neither of the two, therefore,

following word, so that of the three syllables it is only *pri* that has any accent. . . . Bentley, in his dissertation on the metres of Terence, allows no accent to either *qui* or *ab*. Spalding.

* As being from *volŭcer*.

† This refers to what he says at the commencement of sect. 27: "We join the words;" he denies that *circum, qui, quale, quantum*, and words of that sort, vary, unless they are closely united to others, from the general rule for acuting the penultimate in dissyllables, and consequently making the last grave. *Spalding. Separata*, "taken separately," *i.e.* apart from others, pronounced by themselves. *Regius.*

‡ That is, the custom of those persons who pronounced *circum, quantum, quale*, in the way noticed in sect. 25, 26.

§ Gesner and Spalding suspect that this parenthesis is an interpolation.

|| So Cic. Orat. c. 18. *Spalding.*

¶ As there is never more than one acute syllable in a word, there will never, where there is one syllable of a word circumflexed, be another acuted, because the syllable which is circumflexed is already acuted, the circumflex accent being compounded of the acute and grave accents. With *in eâdem* in the text is to be understood *voce.*

will terminate a Latin word. Those words, however, which consist but of one syllable, will be either acuted or circumflexed, that there may be no word without an acute.

32 In sounds also occur those faults of utterance and pronunciation, of which specimens cannot be given in writing; the Greeks, who are more happy in inventing names, call them *iotacisms, lambdacisms, ἰσχνότητες,* and *πλατείασμοι*:* as also *χοιλοστομία,* when the voice is heard, as it were, in the depths of the throat. 32. There are also certain peculiar and inexpressible sounds, for which we sometimes find fault with whole nations. All the incorrectnesses, then, which we have mentioned above, being removed, there will result that which is called *ὀρθοέπεια,* that is, a correct and clear utterance of words with an agreeableness of sound; for so may a right pronunciation be termed.

34. All other faults arise out of more words than one; among which faults is the *solecism;* though about this also there has been controversy. For even those who admit that it lies in the composition of words, yet contend that, because it may be corrected by the amendment of a single word, it is the incorrectness of a word, and not a fault in composition; 35. since, whether *amaræ corticis* or *medio cortice* constitutes a fault in gender, (to neither of which do I object, Virgil† being the author of both; but let us suppose that one of the two is incorrect,) the alteration of one word, in which the fault lay, produces correctness of phraseology; so that we have *amari corticis* or *mediâ cortice.* This is a manifest misrepresentation; for neither of the words is wrong, taken separately, but the fault lies in them when put together; and it is a fault therefore of phrase. 36. It is, however, a question of greater sagacity, whether a solecism can be committed in a single word; as if a man, calling one person to him, should say *venite,*

* An *iotacism* is when the sound of the iota is too much protracted, as when, for *Troìa, Maia,* we say *Troiìa Maiìa,* doubling, as it were, the letter. See Isidore Origg. i. 31; Diomed, Putsch. p. 448. A *lambdacism* is a similar fulness or doubling of the letter *l,* as for *eiucit, ellucit.* See Isidore and Diomed, ll. cc., and Erasmus, Dial. de Pronuntiatione, who also says that *ἰσχνότης* is a shrillness or squeaking of the voice from too great contraction of the throat, *πλατείασμος* being the opposite fault, when, from the mouth opening too wide, the sound is too full and broad.

† Ecl. vi. 62, 63; Georg. ii. 74.

or, sending several away from him, should say *abi*, or *discede;* or, moreover, when an answer does not agree with the question, as if to a person saying *quem vides?* you should reply *ego.* Some also think that the same fault is committed in gesture, when one thing is signified by the voice, and another by a nod or by the hand. 37. With this opinion I do not altogether agree, nor do I altogether dissent from it; for I allow that a solecism may occur in one word, but not unless there be something having the force of another word, to which the incorrect word may be referred; so that a solecism arises from the union* of things by which something is signified or some intention manifested; and, that I may avoid all cavilling, *it sometimes occurs in one word, but never in a word by itself.*

38. But under how many, and what forms, the solecism occurs, is not sufficiently agreed. Those who speak of it most fully make the nature of it fourfold, like that of the barbarism;† so that it may be committed by *addition*, as, *Veni de Susis in Alexandriam;* by *retrenchment*, as *Ambulo viam, Ægypto venio; ne hoc fecit;* 39. by *transposition*, by which the order of words is confused, as, *Quoque ego: Enim hoc voluit; Autem non habuit;* under which head, whether *igitur*, placed at the beginning of a phrase, ought to be included, may be a matter of dispute, because I see that eminent authors have been of opposite opinions as to the practice, it being common among some, while it is never found in others. 40. These three sorts of irregularity some distinguish from the solecism, and call a fault of *addition* "a pleonasm," of *retrenchment* "an ellipsis," of *inversion* "an anastrophe," and allege that if these fall under the head of solecism, the *hyperbaton* may be included under the same title. 41. *Substitution* is, without dispute, when one thing is put for another; an irregularity which we find affecting all the parts of speech, but most frequently the verb, because it has most modifications; and accordingly, under the head of *substitution*, occur solecisms in *gender*, *tense*, *persons*, *moods*, (or *states*, or *qualities*, if any one wish that they should be so called,) being six, or, as some will have it, eight‡ in number (since into however

* That is, the *incorrect* union.

† Sect. 6.

‡ I do not find eight moods expressly mentioned by any of the grammarians *quibling.*

many forms you distinguish each of the parts of speech of which mention has just been made, there will be so many sorts of errors liable to be committed), as well as in *numbers*, of which we have the *singular* and *plural*, the Greeks also the *dual*. 42. There have, indeed, been some who assigned us also a dual, *scripsere, legere ;* a termination which was merely a softening for the sake of avoiding roughness of sound, as, among the old writers, *malè merere* for *malè mereris ;* and thus what they call the *dual* consists in that one sort of termination only, whereas among the Greeks it is found not only through almost the whole system of the verb, but also in nouns; though even so the use of it is very rare. 43. But in no one of our authors is this distinction of ending to be discovered; on the contrary, the phrases, *Devenere locos, Conticuere omnes, Consedere duces,* show us plainly that no one of them refers to two persons only ; *dixere*, too, though Antonius Rufus* gives it as an example of the contrary, the crier† pronounces concerning more advocates than two. 44. Does not Livy, also, near the beginning of his first book, say. *Tenuere arcem Sabini*, and a little afterwards, *In adversum Romani subiere ?* But whom shall I follow in preference to Cicero, who, in his Orator,‡ says, " I do not object to *scripsere*, though I consider *scripserunt* to be preferable ? "

45. In appellative and other nouns, likewise, the *solecism* shows itself in regard to *gender*, and to *number*, but especially to *case*. Whichsoever of those three shall be put in the place of another, the error may be placed under this head ; as also incorrectnesses in the use of *comparatives* and *superlatives ;*§

* Of Antonius Rufus there is no mention in any other writer, except that the scholiasts on Horace relate that he was known by his translations of Homer and Pindar, and by some comedies that he wrote. An allusion is also made to him by Velius Longus, de Orthogr. Putsch. p. 2237. *Spalding.*

† At trials the crier of the court, after the pleaders on both sides had finished their speeches, used to say *Dixere,* " they have spoken ;" but though this might frequently refer to two speakers, it was often uttered at the conclusion of the speeches of several. *Spalding.*

‡ C 47.

§ I follow Gesner's punctuation in this passage : *Quicquid eorum alteri succedet, huic parti subjungatur licet ; per comparationes,* &c. ; but something seems to have fallen out of the text between *licet* and *per* Gallæus puts a full stop at *licet*, and changes *per* into *Insuper ;* but this alteration does not much mend the passage.

as well as cases in which the *patronymic* is put for the *possessive*, or the contrary.* 46. As to a fault committed in regard to quantity, such as *magnum peculiolum*, there will be some who will think it a *solecism*, because a diminution is used instead of the integral word; but for my own part, I doubt whether I should not rather call it *a misapplication of a word*, for it is a departure from the signification; and the impropriety of a *solecism* is not an error as to the sense of a word, but in the junction of words. 47. In respect to the *participle* errors are committed in *gender* and *case*, as in the noun; in *tense*, as in the verb; and in *number*, as in both. The *pronoun*, also, has *gender*, *number*, and *case*, all of which admit mistakes of this kind. 48. Solecisms are committed, too, and in great numbers, as to parts of speech,† but it is not enough merely to remark this generally, lest the pupil should think a solecism committed only where one part of speech is put for another, as a *verb* where there ought to have been a *noun*, or an *adverb* where there ought to have been a *pronoun*, and the like. 49. For there are some nouns *cognate*, as they say, that is, of the same kind, in regard to which he who shall use another species than that which he ought to use, will be guilty of no less an error than if he were to use a word of another genus. 50. Thus *an* and *aut* are both conjunctions, yet you would be incorrect in asking, *hic, aut ille, sit?* *Ne* and *non* are both adverbs, yet he who should say *non feceris* for *ne feceris*, would fall into a similar error, since the one is an adverb of denying, the other of forbidding. I will add another example; *intro* and *intus* are both adverbs of place; yet *eo intus*, and *intro sum*, are solecisms. 51. The same faults may be committed in regard to the different sorts of *pronouns*, *interjections*, and *prepositions*. The discordant collocation of preceding and following words, also, in a sentence of one clause, is a solecism.‡

* *Agamemnonius Orestes* is an example of the possessive for the patronymic; but of the patronymic used for the possessive the commentators give no instance. Diomede, Putsch. p. 310, observes that the patronymic cannot be so used.

† That is, by mistaking the parts of speech, and putting one for another.

‡ *In oratione comprehensionis unius sequentium ac priorum inter se inconvenientia positio.*] An obscure passage. The commentators understand it of the *anacoluthon*. Quintilian has given no example, or we might have discovered his meaning more easily. . . . By *oratio com-*

52. There are expressions, however, which have the *appearance of solecisms*, and yet cannot be called faulty, as *tragœdia Thyestes*, *Ludi Floralia*, and *Megalesia;* for though these modes of expression have fallen into disuse in later times, there was never any variation from them among the ancients. They shall therefore be called *figures;* figures more common indeed among the poets, but allowable also to writers and speakers in prose. 53. But a figure will generally have something right for its basis, as I shall show in that part of my work which I just before promised.* Yet what is now called a *figure* will not be free from the fault of solecism, if it be used by any one unknowingly.† 54. Of the same sort, though, as I have already said,‡ they have nothing of figure, are names with a feminine termination which males have, and those with a masculine termination which females have. But of the solecism I shall say no more; for I have not undertaken to write a treatise on grammar, though, as grammar met me in my road, I was unwilling to pass it without paying my respects to it.

55. In continuation, that I may follow the course which I prescribed§ to myself, let me repeat that *words* are either *Latin* or *foreign*. Foreign words, like men, and like many of our institutions, have come to us, I might almost say, from all nations. 56. I say nothing of the Tuscans, Sabines, and

prehensionis unius I understand words joined, not separated, or to be distinguished by commas, according to our fashion. *Spalding. Positio* Spalding is inclined to take in the sense of *casus*, on the supposition that expressions somewhat similar to *ludi Floralia*, and others noticed in the next section, were what Quintilian had in view; but this notion seems hardly compatible with the other words of the sentence, for, if this were Quintilian's meaning, why should *sequentia* and *priora* be particularly specified? Turnebus seems to shoot nearer to the mark, suggesting that Quintilian means such a mistake as a man would commit in saying *omnia prius experiri quàm armis sapientem decet* instead of *arma*. The French translator in Didot's edition, 1853, renders the passage thus: "Il y a aussi solécisme, lorsque, dans une phrase sans division, les mots qui précèdent et ceux qui suivent, ne s'accordent pas entre eux."

* Book ix. c. 1—3.

† Spalding aptly quotes Seneca, Ep. 95: "A grammarian is not ashamed if he commits a solecism knowingly; he is ashamed if he commits one unknowingly."

‡ I. 4, 24.

§ See sect. 3.

Prænestines, for though Lucilius attacks Vectius* for using their dialect, as Pollio discovers *Patavinity* in Livy, I would consider every part of Italy as Roman. 57. Many Gallic words have prevailed among us, as *rheda*, "a chariot," and *petorritum*, "a four-wheeled carriage,"† of which, however, Cicero uses one, and Horace the other. *Mappa*, "a napkin," too, a term much used in the circus, the Carthaginians claim as theirs;‡ and *gurdus*, a word which the common people use for *foolish*, had, I have heard, its origin in Spain.§ 58. But this division‖ of mine is intended to refer chiefly to the Greek language; for it is from thence that the Roman language is, in a very great degree, derived; and we use even pure Greek words, where our own fail, as they also sometimes borrow from us. Hence arises the question, whether it is proper that foreign words should be declined with cases in the same way as our own. 59. If you meet with a grammarian who is a lover of the ancients, he will say that there should be no departure from the Latin method; because, as there is in our language an ablative case, which the Greeks have not, it is by no means becoming for us to use one case of our own, and five Greek cases. 60. And he would also praise the merit of those who studied to increase the resources of the Latin language, and asserted that they need not introduce foreign practices; under the influence of which notion they said *Castōrem*, with the middle syllable long, because such was the case with all our nouns whose nominative case ends in the same letters as *Castor;* and they retained the practice, moreover, of saying *Palæmo*, *Telamo*, and *Plato* (for so Cicero also called him), because they found no Latin word that terminated with the

* Camerarius and Turnebus suppose that this is the orator Vectius, or Vettius, mentioned by Cicero, Brut. c. 46, as his contemporary; but he, as Spalding observes, was a Marsian; and the Vectius attacked by Lucilius must have lived before Cicero's time. Who the Vectius mentioned in the text was, is, therefore, uncertain.

† Vossius derives *rheda* from the German or Belgic *reden*, or *ryden*, "to ride" on horseback, or in a carriage; but what sort of carriage it properly meant is unknown. *Petorritum*, as Spalding observes, referring to Bulletus's Celtic Lexicon, is from the Celtic *pedwar*, "four," and *rit*, "a wheel."

‡ The learned have not yet penetrated to its Phœnician origin. *Spalding.*

§ The Spaniards, says Vossius, have still the word *gordo*, "fat."

‖ The division of words into native and foreign, sect. 55.

letters *o* and *n*. 61. Nor did they willingly allow masculine Greek nouns to end in *as* in the nominative case, and accordingly, we read in Cælius, *Pelia Cincinnatus;** in Messala, *Bene fecit Euthia;*† in Cicero, *Hermagora;* so that we need not wonder that the forms *Ænea* and *Anchisa* were used by most of the old writers: for, said they, if those words were written as *Mæcenas*, *Suffenas*, *Asprenas*, they would end in the genitive case, not with the letter *e*, but with the syllable ***tis***. 62. Hence, to *Olympus* and *tyrannus* they gave an acuted middle syllable, because our language does not permit the first syllable of a word, if short, to have an acute accent when two long syllables follow.‡ 62. Thus the genitive had the forms *Achilli* and *Ulixi*;§ and many others similar. The modern grammarians have now made it a practice rather to give Greek declensions to Greek nouns; a practice which cannot, however, always be observed. For myself, I prefer following the Latin method, as far as propriety allows; for I would not now say *Calypsonem*, like *Junonem*, though Caius Cæsar,‖

* Whether these are the words of Cælius, Cicero's contemporary, an orator of some eminence, who is mentioned by Quintilian, i. 6, 29; iv. 2, 123, or of the historian Cælius Antipater, who lived in the time of the Gracchi, no commentator has told us; nor does it appear why Pelias, who seems to have been the father of Alcestis, so well known from the history of Jason, is called Cincinnatus, since nothing is said about his hair, as far as I remember, by any of the poets. That Quintius Cincinnatus, the famous dictator, was named *à cincinnis*, from his curls, is generally admitted. *Spalding.*

† Of whom Messala thus spoke, we are ignorant; and I know no mention of a Euthia in any writer, except that the accuser of Phryne, against whom Hyperides defended her, had that name. *Spalding.*

‡ *Inde Olympo et tyranno acutam mediam dederunt, quia duabus longis sequentibus primam brevem acui noster sermo non patitur.*] Here is a manifest error, not of the transcribers, as it would appear, but of Quintilian himself, from inadvertence. At first he seems to have had in his thoughts the difference between the Roman and the Greek method of pronunciation; as the Romans would say, Ὀλύμπος, *τυράννος*, instead of the Greek Ὄλυμπος, *τύραννος*: but having chanced to put those words in the dative, to suit *dederunt*, he accommodated his rule (as to two long syllables preceded by a short one) to that case, forgetting that it was a law of the Greek language as much as of the Latin. In the manuscripts there is no assistance, for they all concur, with wonderful exactness, in the received reading. *Spalding.*

§ From the nominatives *Achilleus* and *Ulysseus*, by synæresis. *Turnebus.*

‖ In his books *de Analogia*, now lost, as learned men have very justly supposed. *Spalding.*

following the older writers, uses this mode of declining. 64. But custom has prevailed over authority In other words, which may be declined without impropriety in either way, he who shall prefer to use the Greek form will speak, not indeed like a Roman, but without incurring blame.

65. *Simple* words are what they are in their first position,* that is, in their own nature. *Compound* words are either formed by subjoining words to prepositions, as *innocens*, (care being taken that there be not two prepositions inconsistent with each other, as *imperterritus*,† otherwise two may be at times joined together, as *incompositus*, *reconditus*, and, a word which Cicero uses, *subabsurdum;*) or they coalesce, as it were, from two bodies into one, as *maleficus*. 66. For to form words out of three constituent parts I should certainly not grant to our language ; though Cicero says that *capsis* is compounded of *cape si vis ;* ‡ and some are found to maintain that *Lupercalia* also consists of three parts of speech, *luere per caprum*.§ 67. As to *solitaurilia*, it is now believed that it is for *suovetaurilia*, ‖ and such indeed is the sacrifice, as it is described also in Homer. ¶ But these words are constructed, not so much of three words, as of parts of three words. Pacuvius

* *Primâ positione.*] That is, in their nominative case, the form in which they are *first laid down.* "Primitive nouns are called *nomina primæ impositionis.*" *Turnebus.*

† Whether Quintilian forgot that Virgil had used this word, or did not think that even Virgil's authority could justify the use of it, we cannot tell. It is not perhaps strictly defensible; for after *per* has been used to increase the signification of *territus*, *in* is prefixed to negative both ; so that it is merely equivalent to *interritus*, the *per* being rendered useless. But it is not much more objectionable than *imperturbatus*, used by Ovid ; and *imperfectus* is a similar compound. From Virgil it was adopted by Silius Italicus and others.

‡ Orat. c. 45. Yet perhaps the great man was mistaken, as he is more than once in regard to etymology ; for neither does Quintilian agree with him. *Capsis* appears to be an archaism for *ceperis*, as *capsit*, according to Festus or Paulus, is for *ceperit, i.e.*, prehenderit. In Plautus, Pœnul. iv. 3, 6, the MSS. and old editions give *ceperit* for *capsit* from a gloss. So *capso*, Bacchid. iv. 4, 61 ; *capsimus*, Rud. ii. 1, 15. *Spalding.*

§ It is generally supposed to be from *Lupercus*, a name of Pan, or a priest of Pan. *Lupercus* is thought to be *lupos arcens.*

‖ From *sus*, *ovis*, and *taurus*. Quintilian admits that this is the generally received derivation, though he himself does not sanction it. *Solitaurilia* is from *solus*, for *totus*, and *taurus*.

¶ Odyss. xi. 130 ; xxiii. 277.

however appears to have formed compounds, most inelegantly of a preposition and two other words:

Nerei
Repandirostrum, incurvicervicum pecus,

"The broad-nosed, crook-necked flock of Nereus." Compounds, however, are formed either of two *entire* Latin words, as *superfui, subterfugi,* (though it is a question whether these are indeed formed of entire words,*) of an *entire* and *incomplete* word, as *malevolus;* of an *incomplete* and *entire* word, as *noctivagus;* of two *incomplete* words, as *pedissequus;* of a *Latin* and a *foreign* word, as *biclinium;* of a *foreign* and a *Latin* word, as *epitogium* and *Anticato;* or of two foreign words, as *epirhedium,* for though the preposition ἐπὶ is Greek, and *rheda* Gallic, and though neither the Greek nor the Gaul uses the compound, yet the Romans have formed their word of the two foreign words. 69. Frequently, too, the union causes a change in the prepositions, as *abstulit, aufugit, amisit,* though the preposition is merely *ab,* and *coit,* the preposition being *con;* and so *ignavi, erepti,* and similar compounds. 70. But the composition of words in general is better suited to the Greeks; with us it is less successful; though I do not think that this results from the nature of the language; but we look with more favour on foreign compounds; and, accordingly, while we admire κυρταύχενα, we hardly defend *incurvicervicum* from derision.

71. Words are *proper* when they signify that to which they were first applied; *metaphorical,* when they have one signification by nature, and another in the place in which they are used. *Common* words we use with greater safety; *new* ones we do not form without some danger; for if they are well received, they add but little merit to our style, and, if rejected, they turn to jokes against us. 72. Yet we must make attempts; for, as Cicero says, even words which have seemed harsh at first, become softened by use.

As to the *onomatopœia,* it is by no means granted to our

* The prepositions *super* and *subter* have indeed lost their accent in these compound words; see sect. 27. But if any one supposes that they are therefore not compounded of entire words, he must deny that any compound is formed of entire words, since one of the words must necessarily lose its accent. *Spalding.* This explanation was suggested by Gesner.

language; for, if we should venture to produce anything like those justly admired expressions λίγξε βιός, "the bow twanged," and σίζε ὀφθαλμός,* "the eye hissed," who would endure it? We should not even dare to say *balare*, "to bleat," or *hinnire*, "to neigh," unless those words were supported by the sanction of antiquity.

CHAPTER VI.

Of language, § 1—3. Analogy, 4—11. Departures from it, 12—27. Etymology, 28—33. Abuses of it, 34—38. Old words, 39—41. Authority, 42. Custom, 43—45.

1. By speakers, as well as writers, there are certain rules to be observed. Language is based on *reason, antiquity, authority, custom.* It is *analogy*, and sometimes *etymology*, that affords the chief support to *reason.* A certain majesty, and, if I may so express myself, religion, graces the *antique.* *Authority* is commonly sought in orators or historians; for, as to the poets, the obligation of the metre excuses their phraseology, unless, occasionally, when, though the measure of the feet offers no impediment to the choice of either of two expressions, they fancifully prefer one to the other; as in the following phrases: *Imo de stirpe recisum, Æëriæ quo congessere palumbes, Silice in nudâ,*† and the like; since the judgment of men eminent in eloquence is in place of reason, and even error is without dishonour in following illustrious guides. *Custom*, however, is the surest preceptor in speaking; and we must use phraseology, like money, which has the public stamp.

But all these particulars require great judgment, especially *analogy;* which, translating it closely from Greek into Latin, people have called *proportion.* 4. What it requires is, that a writer or speaker should compare whatever is at all doubtful, with something similar concerning which there is no doubt, so as to prove the uncertain by the certain. This is done in two

* Il. iv. 125; Odyss. ix. 394.

† Virg. Æn. xii. 208; Ecl. iii. 69; i. 15. Yet, with regard to *stirps*, Virgil adheres to the rule of the grammarians, that it is masculine when used of trees, feminine when used of persons. *Palumbes* is feminine in Horace. *Silex* was more frequently used in the masculine gender.

ways: by a *comparison* of similar words, in respect chiefly to their last syllables (for which reason the words that have but one syllable are said not to be accountable to analogy), and by looking to *diminutives*. 5. Comparison, in nouns, shows either their *gender* or their *declension;* their *gender*, as, when it is inquired whether *funis* be masculine or feminine, *panis* may be an object of comparison with it; their *declension*, as, if it should be a subject of doubt whether we should say *hac domu* or *hac domo*, and *domuum* or *domorum*, *domus*, *anus*, *manus* may be compared with each other. 6. The formation of *diminutives* shows only the gender of words, as (that I may take the same word for an example) *funiculus* proves that *funis* is masculine. 7. There is also similar reason for comparison in verbs; as if any one, following the old writers, should pronounce *fervere* with the middle syllable short, he would be convicted of speaking incorrectly, since all verbs which end with the letters *e* and *o* in the indicative mood, when they have assumed the letter *e* in the middle syllables in the infinitive, have it necessarily long, as *prandeo*, *pendeo*, *spondeo*, *prandēre*, *pendēre*, *spondēre*. 8. But those which have *o* only in the indicative, when they end with the same letter *e* in the infinitive, shorten it, as *lego*, *dico*, *curro*, *legere*, *dicere*, *currere;* although there occurs in Lucilius,

Fervit aqua et fervet; fervit nunc, fervet ad annum.

"The water boils and will boil; it boils now, and will boil for a year."

But with all respect to a man of such eminent learning, if he thinks *fervit* similar to *currit* and *legit*, *fervo* will be a word like *curro* and *lego*, a word which has never been heard by me. But this is not a just comparison; for *servit* is like *fervit*,* and he that follows this analogy must say *fervire* as well as *servire*. 10. The present indicative also is sometimes discovered from the other moods and tenses; for I remember that some people who had blamed me for using the word *pepigi*, were convinced by me of their error; they had allowed, indeed, that the best authors had used *pepigi*, but denied that analogy permitted its use, since the present indicative *paciscor*, as it had the form of a passive verb, made in the perfect tense *pactus sum*. 11. But I, besides adducing the authority of

* A very proper observation of Quintilian; for when did the termination *ervit* belong to the third conjugation? *Spalding.*

orators and historians, maintained that *pepigi* was also supported by analogy; for, as we read in the Twelve Fables, *ni ita pagunt*, I found *cadunt* similar to *pagunt*, whence the present indicative, though it had fallen into disuse through time, was evidently *pago*, like *cado;* and it was therefore certain that we say *pepigi* like *cecidi*. 12. But we must remember that the course of analogy cannot be traced through all the parts of speech, as it is in many cases at variance with itself.* Learned men, indeed, endeavour to justify some departures from it, as, when it is remarked how much *lepus* and *lupus*, though of similar terminations in the nominative, differ in their cases and numbers, they reply that they are not of the same sort, since *lepus* is epicene, and *lupus* masculine; although Varro, in the book in which he relates the origin of the city of Rome, uses *lupus* as feminine, following Ennius and Fabius Pictor. 13. But those same grammarians, when they are asked why *aper* makes *apri*, and *pater patris*, assert that the first is declined absolutely, and the second with reference to something; † and, besides, as both are derived from the Greek, they recur to the rule that πατρὸς gives *patris*, and κάπρου *apri*. 14. But how will they escape from the fact that nouns, which end with the letters *u* and *s* in the nominative singular, never, even though feminine, end with the syllable *ris* in the genitive, ‡ yet that *Venus* makes *Veneris;* and that, though nouns ending in *es* have various endings in the genitive, yet their genitive never ends in that same syllable *ris*, when, nevertheless, *Ceres* obliges us to say *Cereris?* 15. And what shall I say of those parts of speech, which, though all of similar commencement, proceed with different inflexions, as *Alba* § makes *Albani* and *Albenses*, *Volo*, *volui* and *volavi?*

* To say that analogy is at variance with itself is an incorrect mode of expression. Quintilian means that we often find departures from analogy where we might expect to see strict adherence to it.

† *Ad aliquid.*] *Aper* being expressed without reference to anything else, while *pater* has relation to *filius;* but this distinction cannot account for the difference in the genitive cases. *Ad aliquid* is taken from the πρός τι in the Categories of Aristotle. "*Ad aliquid* dictum est quod sine intellectu illius ad quod dictum est, proferri non potest, ut *filius, servus.*" Priscian, p. 580, ed. Putsch. *Spalding.*

‡ He forgot *tellus, uris*, as we are reminded by Turnebus.

§ There are two towns named *Alba*, one in Latium, from which comes *Albani*, the other on the lake Fucinus, whose inhabitants are called *Albenses*. Varro, de L. L. lib. vii.

For that verbs, which end with the letter *o* in the first person singular, are variously formed in the perfect, analogy itself admits, as *cado* makes *cecidi, spondeo, spopondi, pingo pinxi, lego legi, pono posui, frango fregi, laudo laudavi;* 16. since *analogy* was not sent down from heaven, when men were first made, to give them rules for speaking, but was discovered after men had begun to speak, and after it was observed how each word in speaking terminated. It is not therefore founded on reason, but on example; nor is it a law for speaking, but the mere result of observation; so that nothing but custom has been the origin of *analogy*. 17. Yet some people adhere to it with a most unpleasantly perverse attachment to exactness; so that they will say *audaciter* in preference to *audacter*,* though all orators adopt the latter, and *emicavit* instead of *emicuit, conire* instead of *coire*. Such persons we may allow to say *audivisse*, and *scivisse*,† *tribunale*, and *faciliter;* let them also have their *frugalis*, instead of *frugi*, for how else can *frugalitas* be formed? 18. Let them also prove that *centum millia nummum* and *fidem Deum* are two solecisms, since they err in both case and number;‡ for we were ignorant of this, forsooth, and were not merely complying with custom and convenience, as in most cases, of which Cicero treats nobly, as of everything else, in his Orator. 19. Augustus, too, in his letters written to Caius Cæsar,§ corrects him for preferring to say *calidum* rather than *caldum*,‖ not because *calidum* is not Latin, but because it is unpleasing,¶ and, as he has himself expressed it by a Greek word, *περίεργον*.

* See, respecting this word, the commentators on Livy, xxii. 25, and especially Duker and Drakenborch on xl. 55. *Spalding.*

† Yet *audivisse* and *scivisse*, unless our texts be extremely corrupt, have been used by writers in many passages. Perhaps Quintilian, therefore, only meant to blame those who said that we ought always to use those uncontracted forms; for Cicero, Orat. c. 47, says *plenum verbum rectè dici et imminutum usitatè*. Spalding.

‡ As if every body else, except those critics, was ignorant that *nummum* is for *nummorum*, and *deum* for *deorum*. See Cic. Orat. c. 46.

§ The son of Agrippa, and adopted son of Augustus, whose letters to him are all lost, except a fragment preserved by Aulus Gellius, xv. 7.

‖ Colomesius supposes that *calidus* was rejected on account of its similarity in sound to *callidus*.

¶ *Quia sit odiosum.*] Burmann ingeniously conjectures *quia i sit odiosum*. But the text is probably correct.

20. All this indeed they consider as mere ὀρθοέπεια, "orthoepy," which I by no means set aside; for what is so necessary as correctness of speech? I think that we ought to adhere to it as far as possible, and to make persevering resistance against innovators; but to retain words that are obsolete and disused, is a species of impertinence, and of puerile ostentation in little things. 21. Let the extremely learned man, who has saluted you without an aspirate, and with the second syllable lengthened,* (for the verb, he will say, is *avēre*,) say also *calefacere* and *conservavisse* rather than what we say;† and with these let him join *face*, *dice*, and the like. 22. His way is the right way; who will deny it? but a smoother and more beaten road is close by the side of it. There is nothing however, with which I am more offended, than that these men, led away by oblique cases, permit themselves, I do not say not to find, but even to alter nominative cases, as when *ebur* and *robur*, so spoken and written by the greatest authors, are made to change the vowel of the second syllable into *o*, because their genitives are *roboris* and *eboris*, and because *sulfur* and *jecur* preserve the vowel *u* in the genitive. For which reason also *jecur* and *femur* have raised disputes. 23. This change of theirs is not less audacious than if they were to substitute the letter *o* for *u* in the genitive case of *sulfur* and *guttur*, because *eboris* and *roboris* are formed with *o*; after the example of Antonius Gnipho,‡ who acknowledges that *robur* and *ebur* are proper words, and even *marmur*, but would have the plurals of them to be *robura*, *ebura*, *marmura*. 24. But if they had paid attention to the affinity of letters, they would have understood that *roboris* is as fairly formed from *robur* as *militis*, *limitis*, from *miles*, *limes*, or *judicis*, *vindicis*, from *iudex*, *vindex*, and would have observed some other forms to which I have adverted above.§ 25. Do not similar nominative cases, as I remarked,‖ diverge into very dissimilar forms in

* Saying *Avē* instead of *Havě*, which, though incorrect, was in common use. *Spalding.*

† Namely *calfacere* and *conservásse.*

‡ An eminent grammarian and rhetorician, whose school is said to have been frequented by many great men, and even by Cicero himself after he was prætor. See Suetonius on Eminent Grammarians, c. vii.; Macrob. Sat. iii. 12.

§ I. 4, 12.

‖ Sects. 12 and 15.

the oblique cases, as *Virgo, Juno; fusus, lusus; cuspis, puppis*; and a thousand others? It happens, too, that some nouns are not used in the plural, others not in the singular; some are indeclinable; some depart altogether from the form of their nominatives, as *Jupiter*. 26. The same peculiarity happens in verbs, as *fero, tuli*, of which the preterperfect is found,* and nothing more. Nor is it of much importance, whether those unused parts are actually not in existence, or whether they are too harsh to be used; for what, for example, will *progenies* make in the genitive singular, or what will *spes* make in the genitive plural? Or how will *quire* and *ruere*, form themselves in the perfect passive, or in the passive participles? 27. It is needless to advert to other words, when it is even uncertain whether *senatus* makes *senatus senatui*, or *senati senato*.† It appears to me, therefore, to have been not unhappily remarked that it is one thing to speak Latin, and another to speak grammar. Of *analogy* I have now said enough, and more than enough.

Etymology, which inquires into the origin of words, is called by Cicero *notation*, because its designation in Aristotle is *σύμβολον*, that is, *nota*; for to a literal rendering of *ἐτυμολογία*, which would be *veriloquium*, Cicero himself, who formed that word, is averse. There are some, who, looking rather to the meaning of the word, call it *origination*. 29. This part of grammar is sometimes of the utmost use; as often, indeed, as the matter, concerning which there is any dispute, stands in need of interpretation; as when Marcus Cœlius would prove that he was a *homo frugi*, "a frugal man," not because he was temperate, (for on that point he could not speak falsely,) but because he was *profitable* to *many*, that is *fructuosus*, from whence, he said, was derived *frugality*.‡ A place is accordingly

* The preterperfect and the tenses formed from it. The text is, *fero, tuli, cujus præteritum perfectum, et ulterius non invenitur*, of which, as Spalding says, the construction is not very clear. He, however, rightly determines that *tuli* must be the antecedent to *cujus*, and not unhappily proposes to read *nil* for *non*.

† The old grammarians (see Putsch. pp. 10 and 712) say that the nouns of the fourth declension anciently conformed to the second. But I do not remember that any writer has used *senato; senati*, in the genitive, occurs frequently in Sallust. *Spalding*.

‡ On what occasion, or in what speech, Marcus Cœlius so facetiously argued, I do not find recorded. That his morals were not of the purest, Cicero, who defends him, admits. *Spalding*.

assigned to etymology in definitions. 30. Sometimes, also, it endeavours to distinguish barbarous from polite words; as when a question arises whether Sicily should be called *Triquetra* or *Triquedra*,* and whether we should say *meridies* or *medidies*;† and similar questions concerning other words which yield to custom. 31. But it carries with it much learning, whether we employ it in treating of words sprung from the Greek, which are very numerous, especially those inflected according to the Æolic dialect, to which our language has most similitude,‡ or in inquiring, from our knowledge of ancient history, into the names of men, places, nations, cities; whence come the names of the *Bruti*, *Publicolæ*, *Pici*; why we say *Latium*, *Italia*, *Beneventum*; what is our reason for using the terms *Capitol*, *Quirinal* hill, and *Argiletum*.§

32. I would now allude, also, to those minuter points,‖ on which the greatest lovers of etymology weary themselves; men who bring back to their true *derivation*,¶ by various and manifold arts, words that have become a little distorted, shortening or lengthening, adding, taking away, or interchanging letters or syllables. In this pursuit, through weakness of judgment, they run into the most contemptible absurdities. Let *consul* be (I make no objection) from "*consulting*" or from "*judging*," for the ancients called *consulere* "judicare," whence still remains the phrase *rogat boni consulas*, that is, *bonum judices*. 33. Let it be old age that has given a name to the *senate*,** for the senators are *fathers*; let *rex*, *rector*, and abundance of other words, be indisputably from *rego*; nor would I dispute the ordinary derivation of *tegula*, *regula*,†† and other words similar

* From ἕδρα? Or from *quadra*? *Spalding.*

† Cicero, Orat. c. 47, thinks that *meridies* was preferred from regard to euphony.

‡ See Foster on Accent and Quantity, p. 92, *seqq.* Spalding refers to a thesis by Schardamus, Leidæ, 1776, entitled *Latina lingua est dialectus linguæ Græcæ.*

§ See Servius on Virg. Æn. viii. 345; Livy i. 19.

‖ These remarks Quintilian directs at Varro, who addressed three books on this subject to Cicero, and as many to Septimius, as well as other writers who were perpetually referring to etymology, a practice which seems to have had its origin in Plato's Cratylus, where it is said that no word is used without a reason. *Turnebus.*

¶ *Veritatem.*] Ἔτυμον. So Cic. Orat. c. 48. *Consule veritatem.*

** *Senectus.*]

†† The quantity of the first syllable of these words might seem to make the received derivation from *tego* and *rego* doubtful. *Spalding.*

to them; let *classis*, also, be from *calare*, "to call together," and let *lepus* be for *levipes*, and *vulpes* for *volipes*. 34. But shall we also allow words to be derived from *contraries*, as *lucus*, "a grove," from *luceo*, "to shine," because, being thick with shade, *parum lucet*, it does *not* shine?* As *ludus*, "a school," from *ludo*, "to play," because it is as far as possible from play? As *Ditis*, "Pluto," from *dives*, "rich," because he is by no means rich? Or shall we allow *homo*, "man," to be from *humus*, "the ground," because he was sprung from the ground, as if all animals had not the same origin, or as if the first men had given a name to the ground before they gave one to themselves? Shall we allow *verba*, "words," to be from *aër verberatus*, "beaten air?" 35. Let us go on, and we shall get so far that *stella*, "a star," will be believed to be *luminis stilla*, "a drop of light," the author of which derivation, an eminent man in literature, it would be ungenerous for me to name in regard to a point on which he is censured by me. 36. But those who have recorded such etymologies in books have themselves set their names to them; and Caius Granius† thought himself extremely clever for saying that *cælibes*, "bachelors," was the same as *cælites*, "inhabitants of heaven," because they are alike free from a most heavy burden, resting his derivation, too, on an argument from the Greek, for he affirmed that ἡϊθέους‡ was used in the same sense. Nor does Modestus§ yield to him in imagination, for he says that because Saturn cut off the *genitalia* of *Cælus*, men who have no wives are, therefore, called *cælibes*. 37. Lucius Ælius‖ declares that *pituita*, "phlegm," is so called *quia petat vitam*, because "it aims at life." But who may not be pardoned after Varro, who wished to persuade Cicero¶ (for it was to him that he wrote

* This derivation has passed into a proverb. Varro, de L. L. p. 8, gives an equally wonderful derivation of *cælum*, from *celando, quod apertum est. Spalding.*

† I have not been able to discover anything of a grammarian of that name. *Spalding.*

‡ Quasi ἀεὶ θεός? Vossius derives *cælebs* from κοίτη and λείπω, quasi κοιλιψ, *carens lecto nuptiali.*

§ Suetonius on Eminent Grammarians, c. xx.

‖ An interpretation of the *carmina Saliorum* by Caius Ælius, a man well acquainted with Latin literature, is cited by Varro de L. L., vi. 1. *Gesner.* No Lucius Ælius is known.

¶ To whom the books de Linguâ Latinâ are inscribed.

this), that *ager*, "a field," is so called because *in eo agatur aliquid*, "something is done in it," and that *graculos*, "jackdaws," are so named because they fly *gregatim*, "in flocks," though it is evident that the one is derived from the Greek, and the other from the cries of the birds themselves? But of such importance was it to Varro to derive, that *merula* "a blackbird," he declared, was so named because it flies alone, as if *mera volans*. Some have not hesitated to apply to etymology for the origin of every name or word; deducing *Longus* and *Rufus*, as I remarked.* from personal peculiarities; *strepere* and *murmurare* from particular sounds; with which they join, also, certain derivatives, as *velox*, "swift," deduced from *velocitas*, "swiftness,"† and the greater number of compounds (as being similar to them), which, doubtless, have their origin from something, but demand no exercise of ingenuity, for which, indeed, except on doubtful points, there is no opportunity in these investigations.

39. Words derived from *antiquity* have not only illustrious patrons, but also confer on style a certain majesty, not unattended with pleasure; for they have the authority of age, and, as they have been disused for a time, bring with them a charm similar to that of novelty. 40. But there is need of moderation in the use of them, in order that they may not occur too frequently, nor show themselves too manifestly, since nothing is more detestable than affectation; nor should they be taken from a remote and already forgotten age, as are *topper*, "quickly," *antigerio*, "very much,"‡ *exanclare*, "to draw out," *prosapia*, "a race," and the verses of the Salii, which are scarcely understood by the priests themselves. 41. Those verses, however, religion forbids to be changed; and we must use what has been consecrated; but how faulty is speech, of which the greatest virtue is perspicuity, if it needs an interpreter! Consequently, as the oldest of new words will be the best, so the newest of old words will be the best.

* I. 4, 25.

† *Ut a* velocitate *dicitur* velox.] The substantive is generally considered to be derived from the adjective. It seems not unreasonable to suppose that the text must be corrupt, and that some fanciful derivation of *velox* originally filled the place which *velocitate* now occupies.

‡ On these two words, see Festus.

42. The case is similar with regard to *authority;* for though he may seem to commit no fault who uses those words which the greatest writers have handed down to him, yet it is of much importance for him to consider, not only what words they used, but how far they gave a sanction to them; for no one would now tolerate from us *turburchinabundus*, "devouring," or *lurchinabundus*, "voracious," though Cato was the father of them; nor would people endure *lodices*, "blankets," in the masculine gender, though that gender pleases Pollio; nor *gladiola* for "little swords," though Messala has used it; nor *parricidatus*, "parricide," which was thought scarcely endurable in Cælius;* nor would Calvus† induce me to use *collos*, "necks;" all which words, indeed, those authors themselves would not now use.

43. There remains, therefore, *custom*, for it would be almost ridiculous to prefer the language which men have spoken rather than that which they now speak; what else, indeed, is old language, but the old manner of speaking? But even for following custom judgment is necessary; and we must settle, in the first place, what that is which we call *custom;* 44. for if custom be merely termed that which the greater number do, it will furnish a most dangerous rule, not only for language, but, what is of greater importance, for life. For where is there so much virtue that what is right can please the majority?‡ As, therefore, *to pluck out hairs*,§ *to cut the hair of the head in a succession of rings*,‖ and *to drink to excess in the bath*,¶ whatever country those practices may have invaded, will not become the *custom*, because no one of them is undeserving of censure, though we *bathe* and *clip our hair*, and *take our meals together* according to custom, so, in speaking, it is not whatever has become a vicious practice with many, that is to be received as a rule of language. 45. For, not to mention how the ignorant

* I understand the historian. *Spalding.*

+ Caius Licinius Calvus, the orator, mentioned with commendation by Cicero, Brut. c. 82. See Wetzel on Epist. ad Div. xv. 21. He is often mentioned by Quintilian. *Spalding.*

‡ Οἱ πλείονες κακοί, said Bias.

§ *Velli.*] The extremely delicate plucked the hair from their skins with tweezers, or removed it by other means. Juv. Sat. viii 114; Sueton. Cæs. 45, Oth. 12, et alibi; Aul. Gell. vii. 12.

‖ Compare xii. 19, 47; Juvenal, vi. 502; Suet. Ner. 51.

¶ Lampridius, Commod. c. 11: *In ipsis balneis edebat.*

commonly speak, we know that whole theatres, and all the crowd of the circus, have frequently uttered barbarous exclamations.* Custom in speaking, therefore, I shall call the agreement of the educated; as I call custom in living the agreement of the good.

CHAPTER VII.

Of orthography, § 1. Distinction of words of doubtful signification, 2—6. Composition with prepositions, 7—9. On the letter *k*, 10. Orthography subservient to custom; antique spelling, 11—27. Difference between spelling and pronunciation, 28, 29. Necessity of judgment, 30—32. Quintilian defends his remarks on this subject, 33—35.

1. Since we have mentioned what rules are to be followed in speaking, we must now specify what are to be observed by writers. What the Greeks call ὀρθογραφία, we may call the *art of writing correctly;* an art which does not consist in knowing of what letters every syllable is composed (for this study is beneath the profession even of the grammarian), but exercises its whole subtilty, in my opinion, on dubious points. 2. As it is the greatest of folly to place a mark† on all long syllables, since most of them are apparent from the very nature of the word that is written, yet it is at times necessary to mark them, as when the same letter gives sometimes one sense and sometimes another, according as it is short or long; thus *malus* is distinguished by a mark, to show whether it means "a tree" or "a bad man;" 3. *palus*, too, signifies one thing when its first syllable is long, and another when its second is so; and when the same letter is short in the nominative and long in the ablative, we have generally to be informed by this mark which quantity we are to adopt.

* The customary language of the multitude, therefore, is not to be our example.

† *Apicem.*] Probably, from the name, something similar to the mark with which we distinguish the ablative case of the first declension. Hence it appears that it was customary to use distinctive marks for words similarly spelled, but of different signification.

4. Grammarians have in like manner thought that the following distinction should be observed; namely, that we should write the preposition *ex*, if the word *specto* was compounded with it, with the addition of *s* in the second syllable, *exspecto;* if *pecto*, without the *s*. 5. It has been a distinction, also, observed by many, that *ad*, when it was a preposition, should take the letter *d*, but when a conjunction, the letter *t*;* and that *cum*, if it signified time, should be written with a *q* and two *u*'s following, but if it meant accompaniment, with a *c*. 6. Some other things were even more trifling than these, as that *quicquid* should have a *c* for the fourth letter, lest we should seem to ask a double question,† and that we should write *quotidie*, not *cotidie*, to show that it was for *quot diebus*. But these notions have already passed away among other puerilities.

7. It is however a question, in writing prepositions, whether it is proper to observe the sound which they make when joined to another word, or that which they make when separate, as, for instance, when I pronounce the word *obtinuit;* for our method of writing requires that the second letter should be *b;* while the ear catches rather the sound of *p;* ‡ 8. or when I say *immunis*, for the letter *n*, which the composition of the word requires, is influenced by the sound of the following syllable, and changed into another *m*. 9. It is also to be observed, in dividing compound words, whether you ought to attach the middle consonant to the first or to the second syllable; for *aruspex*, as its latter part is from *spectare*, will assign the letter *s* to the third syllable; *abstemius*, as it is formed of *abstinentia temeti*, "abstinence from wine," will leave the *s* to the first syllable. 10. As to *k*, I think it should not be used in any words, except those which it denotes of itself, so that it may be put alone.§ This remark I have not omitted to make, because there are some who think *k* necessary when *a* follows; though there is the letter *c*, which suits itself to all vowels.

* The distinction, therefore, between *ad* and *at*, which we scrupulously observe, I should suppose that Quintilian disregarded. *Spalding.*

† *Quid? quid?*

‡ In manuscripts we frequently find *optinere*, which is proved from this passage to be not always a mistake of the copyists. It is indeed difficult to preserve the grave sound of *b* when *t* follows; before *d*, as in *obducere*, it is very easy. *Spalding.*

§ See i. 4, 9.

11. But orthography submits to custom, and has therefore frequently been altered. I say nothing of those ancient times when there were fewer letters, and when their shapes were different from these of ours, and their natures also different, as that of *o* among the Greeks, which was sometimes long and sometimes short, and, as among us, was sometimes put for the syllable which it expresses by its mere name.* 12. I say nothing also of *d*, among the ancient Latins, being added† as the last letter to a great number of words, as is apparent from the rostral pillar erected to Caius Duellius in the forum;‡ nor nor do I speak of *g* being used in the same manner,§ as, on the *pulvinar* ‖ of the Sun, which is worshipped near the temple of Romulus, is read *vesperug*, which we take for *vesperugo*. 13. Nor is it necessary to say anything here of the interchange of letters, of which I have spoken above;¶ for perhaps as they wrote they also spoke.

* That is, for the interjection.

† *Ut*—d—*ultimam adjectam.*] How is this accusative governed? *Et* seems to be wanting after *ut: ut et* (transeo *sc.*) d *ultimam*, &c.

‡ This we may ourselves see, as the base of this ancient monument has been preserved even to our times, and a representation of it is given in a treatise by Peter Ciacconius, whence Grævius has copied it into his Florus, p. 156; and it is also to be found in Gruter, p. 404. The letters are not yet obliterated; and we read *pugnandod* for *pugnando; marid* for *mari; dictatored* for *dictatore; in altod* for *in alto; navaled prædad* for *navali prædâ*. More examples are given by Vossius, Art. Gramm. ii. 14. *Spalding.*

§ Of this addition I find no example in monumental inscriptions; and Quintilian himself appears to intimate that it was more rare than the preceding. It is probable that the ancients, instead of *vespere*, used *vesperu*, like *noctu*, an ablative case, as is proved, from Ennius, by Vossius, de Anal. ii. 12. To this they added *g*, *vesperug*, which the contemporaries of Quintilian erroneously supposed (for Quintilian himself rejects the supposition) to be for *vesperuginem*, regarding it as a curtailed instead of a lengthened word. *Spalding.*

‖ In what sense Quintilian uses this word is by no means clear. That the letters were embroidered on the *pulvinar*, or couch, with the needle, as Gesner in his Thesaurus supposes, seems a conjecture quite inadmissible; but there were *pulvinaria* made of solid material, in imitation of real couches, on which the letters might have been engraved. But it appears best to take *pulvinar* in the sense of *a temple in which* pulvinaria *were spread.* In Livy xxi. 62, we may suppose *pulvinarium* to be used in this sense; and we may also refer to Tacitus, Ann. xv. 74. *Spalding.* This sense of the word is abundantly established in Scheller's Latin Lexicon.

¶ I. 4, 12—17.

14. It was for a long time a very common custom not to double the semivowels; while, on the other hand, even down to the time of Accius and later, they wrote, as I have remarked,* long syllables with two vowels. 15. Still longer continued the practice of using *e* and *i* together, joining them in the same manner as the Greeks in the diphthong *ει*. This practice was adopted for a distinction in cases and numbers, as Lucilius † admonishes us:

> *Jam pueri venere: E postremum facito, atque I,*
> *Ut puerei plures fiant;*‡

and afterwards,

> *Mendaci furique addes E, quum dare furei*
> *Jusseris.*§

However this addition of *e* is both superfluous, since *i* has the nature as well of a long as of a short letter, and also sometimes inconvenient; for in those words which have *e* immediately before the last syllable, and end with *i* long, we should use, if we adopted that method, a double *e*, as *aureei*, *argenteei*, and the like; and this would be extremely embarrassing to those who are being taught to read; 17. as happens also among the Greeks by the addition of the letter *i*, which they not only write at the end of dative cases, but sometimes even in the middle of a word, as ΑΗΙΣΤΗΙ,‖ because etymology, in making a division of the word into three syllables, requires that letter. 18. The diphthong *αι*, for the second letter of which we now substitute *e*, our ancestors expressed, with a varied pronuncia-

* I. 4, 10.

† He wrote rules of grammar in verse. *Regius.* Whether these remarks on grammatical points were introduced among his satires, or were separate compositions, critics cannot inform us.

‡ That is, "Now the boys (*pueri*) are come; make the conclusion *e* and *i*, that the boys (*puerei*) may be made plural." The *e* was inserted to distinguish the plural from the genitive singular.

§ Spalding considers that *fur* is used in the quotation in the sense of *servus*. If so, the sense will be, "To a liar and a slave (*mendaci furique*) you shall add *e*, when you shall order to give to a slave;" *i.e.*, when you shall use the dative case, which was to end in *ei* to distinguish it from the ablative. See Velius Longus, Putsch. p. 2220; Aul. Gell. xiii. 25.

‖ For λῃστῆϊ, the dative case of λῃστής, a robber. Gryphius's edition, for *in tres syllabas*, has *in duas syllabas*, which Burmann would adopt, making the division λῃι—στῆι, or λῃ—στῆϊ. The first syllable of the word requires an iota, as coming from λεία, "booty."

tion, by *a* and *i*, some using it in all cases like the Greeks others only in the singular, when they had to form a genitive or dative case, whence Virgil, a great lover of antiquity, has inserted in his verses *pictai vestis*, and *aulai;* but in the plural number of such nouns they use *e*, as *Syllae*, *Galbae*. 19. There is on this point also a precept of Lucilius,* which, as it is expressed in a great number of verses, whoever is incredulous about it may seek in his ninth book.

20. I may mention, too, that in the time of Cicero, and somewhat later, the letter *s*, as often as it occurred between two long vowels, or followed a long vowel, was doubled, as *caussæ*, *cassus*, *divissiones;* for that both he and Virgil wrote in this way, their own hands show. 21. But those of a somewhat earlier period wrote the word *jussi*, which we express with two *s*'s, with only one. That *optimus*, *maximus*, should take *i* as their middle letter, which among the ancients was *u*, is said to have been brought about by an inscription to Caius Cæsar.† 22. The word *here* we now end with the letter *e;* but I still find in the books of the old comic writers *Heri ad me venit;*‡ which same mode of spelling is found in the letters of Augustus,§ which he wrote or corrected with his own hand, 23. Did not Cato the Censor, also, for *dicam* and *faciam*, write *dicem* and *faciem?*‖ and did he not observe the same method in other verbs which terminate in a similar way? This is indeed manifest from his old writings, and is remarked by Messala in his book on the letter *s*. *Sibe* and *quase* occur in the writings of many authors; but whether the authors themselves intended them to be written thus, I do not know; that Livy spelled them in that way, I learn from Pedianus, who himself imitated Livy; we end those words with the letter *i*.

25. Why need I allude to *vortices* and *vorsus* and other

* This precept is lost. It seems to have been similar to that of Nigidius Figulus, which we find in Aul. Gell. xiii. 25. *Spalding.*

† Caligula, who first adopted this title of *optimus maximus;* Sueton. c. 22. The same mode of spelling continued, as appears from an inscription to Trajan in Gruter, p. 247, and Reines. iii. 13, 15. *Burmann.*

‡ See i. 4, 8. Terence, Phorm. i. 1, 2.

§ See i. 6, 19. Sueton. Aug. c. 71; Cal. c. 8. See also Aul. Gell. x. 24.

‖ Festus gives *recipiem* also from Cato; and *attingem*, but without naming the author from whom it comes.

similar words, in which Scipio Africanus is said to have first changed the second letter into *e?* 26. Our tutors wrote *ceruum* and *seruum* with the letters *u* and *o*, *ceruom*, *seruom*, in order that the same two vowels, following each other, might not coalesce and be confounded in the same sound; they are now written with two *u*'s, on the principle which I have stated;* though in neither way is the word which we conceive exactly expressed. Nor was it without advantage that Claudius introduced the Æolic letter† for such cases 27. It is an improvement of the present day that we spell *cui* with the three letters which I have just written; for in this word, when we were boys, they used, making a very offensive sound, *qu* and *oi*, only that it might be distinguished from *qui*.

28. What shall I say, too, of words that are written otherwise than they are pronounced? *Gaius* is spelled with the letter *c*, which, inverted, means a woman; for that women were called *Caiæ*, as well as men *Caii*, appears even from our nuptial ceremonies.‡ 29. Nor does *Gneius* assume that letter, in designating a prænomen, with which it is sounded.§ We read, too, *columna* and *consules*‖ with the letter *n* omitted; and *Subura*, when it is designated by three letters, takes *c* as the third.¶ There are many other peculiarities of this kind; but I fear that those which I have noticed have exceeded the limits of so unimportant a subject.

30. On all such points let the grammarian use his own judgment, for in this department it ought to be of the greatest authority. For myself, I think that all words, (unless custom has ordered otherwise,) should be written in conformity with their sound. 31. For this is the use of letters, to preserve

* See i. 4, 11.

† See i. 4, 7.

‡ In which the woman said, *Ubi tu Caius, ibi ego Caia.*

§ For it is marked *Cn.*, not, as it ought to be, *Gn. Spalding.* But he is inclined, not without reason, to think the words *in prænominis notâ* a glossema.

‖ Spalding observes that he knows of no example of the omission of *n* in *columna*. *Cos.* and *Coss.* were the ordinary abbreviations of *consul* and *consules*.

¶ Varro de Ling. Lat. lib. iv. derives *Suburra* from a *pagus* called *Sucusanus*, and supposes that it was originally *Sucusa*, that the *c* was afterwards changed into *b*, and that *Subusa* was then transformed into *Suburra*. We frequently see *Suc.*, says Spalding, as the designation of the *Suburran* or *Sucusan* tribe in the inscriptions of Gruter.

words, and to restore them, like a deposit, to readers; and they ought, therefore, to express exactly what we are to say.

32. These are the most important points as to speaking and writing correctly. The other two departments, those of speaking with significancy* and elegance, I do not indeed take away from the grammarians, but, as the duties of the rhetorician remain for me to explain, reserve them for a more important part of my work.

33. Yet the reflection recurs to me, that some will regard those matters of which I have just treated as extremely trifling, and even as impediments to the accomplishment of anything greater. Nor do I myself think that we ought to descend to extreme solicitude, and puerile disputations, about them; I even consider that the mind may be weakened and contracted by being fixed upon them. 34. But no part of grammar will be hurtful, except what is superfluous. Was Cicero the less of an orator because he was most attentive to the study of grammar, and because, as appears from his letters, he was a rigid exactor, on all occasions, of correct language from his son? Did the writings of Julius Cæsar *On Analogy* diminish the vigour of his intellect? Or was Messala less elegant as a writer, because he devoted whole books, not merely to single words, but even to single letters? These studies are injurious, not to those who pass through them, but to those who dwell immoderately upon them.

CHAPTER VIII.

Of reading, § 1—4. Authors to be read, Greek and Latin, 4—12. Duty of the grammarian, 13—17. Of lectures on historical reading, 18—21.

1. READING remains to be considered; in which how a boy may know when to take breath, where to divide a verse,†

* *Significanter.*] Spalding interprets this word by *perspicuè, clarè.* But it signifies something more; it implies speaking with propriety, using language suited to the subject, and putting "proper words in proper places."

† *Versum distinguere.*] That is, to divide a verse properly in reading, so as not to run always on to the end of it, and there drop the voice. That Quintilian is speaking of the reading of poetry, is apparent from

where the sense is concluded, where it begins, when the voice is to be raised or lowered, what is to be uttered with any particular inflexion of sound, or what is to be pronounced with greater slowness or rapidity, with greater animation or gentleness than other passages, can be taught only in practice. 2. There is but one direction, therefore, which I have to give in this part of my work, namely, *that he may be able to do all this successfully, let him understand what he reads.*

Let his mode of reading, however, be, above all, manly, uniting gravity with a certain degree of sweetness; and let not his reading of the poets be like that of prose; for it is verse, and the poets say that they sing; yet let it not degenerate into sing-song, or be rendered effeminate with unnatural softness, as is now the practice among most readers; on which sort of reading we hear that Caius Cæsar, while he was still under age, observed happily to some one that was practising it, "If you are singing, you sing badly; if you pretend to read, you nevertheless sing." 3. Nor would I have *prosopopeiæ* pronounced, as some would wish them, after the manner of actors; though I think there should be a certain alteration of the voice by which they may be distinguished from those passages in which the poet speaks in his own person.

4. Other points * demand much admonition to be given on them; and care is to be taken, above all things, that tender minds, which will imbibe deeply whatever has entered them while rude and ignorant of everything, may learn, not only what is eloquent, but, still more, what is morally good. 5. It has accordingly been an excellent custom, that reading should commence with *Homer* and *Virgil*, although, to understand their merits, there is need of maturer judgment; but for the acquisition of judgment there is abundance of time; for they will not be read once only. In the meantime, let the mind of the pupil be exalted with the sublimity of the heroic verse, conceive ardour from the magnitude of the subjects, and

the next section; and he had previously, i. 4, 2, mentioned instruction in the reading of the poets as part of the grammarian's duty. *Spalding.*

* Besides the mere method of reading, caution is to be used as to the subjects read; and moral instruction should be occasionally introduced during the lesson, according as the matter may suggest it.

be imbued with the noblest sentiments. 6. The reading of *tragedies* is beneficial; the *lyric poets* nourish the mind, provided that you select from them, not merely authors, but portions of their works; for the Greeks are licentious in many of their writings, and I should be loath to interpret Horace in certain passages. As to *elegy*, at least that which treats of love, and *hendecasyllables*,* and poems in which there are portions of Sotadic verses, (for concerning Sotadic verses themselves no precept need even be mentioned,) let them be altogether kept away, if it be possible; if not, let them at least be reserved for the greater strength of mature age.† 7. Of *comedy*, which may contribute very much to eloquence, as it extends to all sorts of characters and passions, I will state a little further on, in the proper place, the good which I think it may do to boys; when their morals are out of danger, it will be among the subjects to be chiefly read. It is of *Menander* that I speak, though I would not set aside other comic writers; for the Latin authors, too, will confer some benefit. 8. But those writings should be the subjects of lectures for boys, which may best nourish the mind and enlarge the thinking powers; for reading other books, which relate merely to erudition, advanced life will afford sufficient time.

The old Latin authors, however, will be of great use, though most of them, indeed, were stronger in genius than in art. Above all they will supply a *copia verborum*; while in their tragedies may be found a weightiness of thought, and in their comedies elegance, and something as it were of *Atticism*. 9. There will be seen in them, too, a more careful regard to regularity of structure than in most of the moderns, who have considered that the merit of every kind of composition lies solely in the thoughts. Purity, certainly, and, that I may so express myself, manliness, is to be gained from them; since we ourselves have fallen into all the vices of refinement, even in our manner of speaking. 10. Let us, moreover, trust to the practice of the greatest orators, who have recourse to the

* Under this name we understand chiefly Phalæcian verses, such as Catullus wrote. *Turnebus.*

† Quintilian seems to have been afraid of giving a pupil Sotadic verses, and others of an effeminate character and full of trochaics, *quod et molle quid sonarent, et continerent plerumque res obscœnas.* Spalding.

poems of the ancients, as well for the support of their arguments, as for the adornment of their eloquence. 11. For in Cicero, most of all, and frequently, also, in Asinius, and others nearest to his times, we see verses of *Ennius, Accius, Pacuvius, Lucilius, Terence, Cæcilius,* and other poets, introduced, with the best effect, not only for showing the learning of the speakers, but for giving pleasure to the hearers, whose ears find in the charms of poetry a relief from the want of elegance in forensic pleading. 12. To this is to be added no mean advantage, as the speakers confirm what they have stated by the sentiments of the poets, as by so many testimonies. But those first observations of mine have reference rather to boys, the latter to more advanced students,* for the love of letters, and the benefit of reading, are bounded, not by the time spent at school, but by the extent of life.

13. In lecturing on the poets, the grammarian must attend also to minor points; so that, after taking a verse to pieces, he may require the parts of speech to be specified, and the peculiarities of the feet, which are necessary to be known, not merely for writing poetry, but even for prose composition; and that he may distinguish what words are barbarous, or misapplied, or used contrary to the rules of the language; 14. not that the poets may thus be disparaged, (to whom, as they are commonly forced to obey the metre, so much indulgence is granted, that even solecisms are designated by other names in poetry, for we call them, as I have remarked,† *metaplasms, schematisms,* and *schemata,*‡ and give to necessity the praise of merit,) but that the tutor may instruct the pupil in figurative terms,§ and exercise his memory. 15. It is likewise

* *Priora illa—hæc sequentia.*] The *former* are the directions which Quintilian had given about the reading of the poets; the *latter* the observations which he had made about the introduction of their verses in prose composition. *Spalding.* But Spalding thinks that the words *priora* and *sequentia* are mere interpretations which have crept into the text from the margin.

† I 5, 52.

‡ *Metaplasmus* is any change in the form of a word, effected by *aphæresis, paragoge,* or any other figure. *Schematismi* and *schemata* have the same meaning; and Spalding thinks it possible that the former may have been introduced into the text by some incorrect transcriber.

§ *Artificialium commonere.*] That is, *vocabula artis frequenti usu nota reddere discentibus.* Spalding.

useful, among the first rudiments of instruction, to show in how many senses each word may be understood. About *glossemata*, too, that is, words not in general use, no small attention is requisite in the grammatical profession. 16. With still greater care, however, let him teach all kinds of tropes, from which not only poetry, but even prose, receives the greatest ornament, as well as the two sorts of *schemata* or figures, called figures of speech and figures of thought. My observations on these figures, as well as those on tropes, I put off to that portion of my work in which I shall have to speak of the embellishments of composition. 17. But let the tutor, above all things, impress upon the minds of his pupils what merit there is in a just disposition of parts, and a becoming treatment of subjects; what is well suited to each character; what is to be commended in the thoughts, and what in the words; where diffuseness is appropriate, and where contraction.

18. To these duties will be added explanations of historical points, which must be sufficiently minute, but not carried into superfluous disquisitions; for it will suffice to lecture on facts which are generally admitted, or which are at least related by eminent authors. To examine, indeed, what all writers, even the most contemptible, have ever related, is a proof either of extravagant laboriousness, or of useless ostentation, and chains and overloads the mind, which might give its attention to other things with more advantage. 19. For he who makes researches into all sorts of writings, even such as are unworthy to be read, is capable of giving his time even to old women's tales. Yet the writings of grammarians are full of noxious matters of this kind, scarcely known even to the very men who wrote them. 20. Since it is known to have happened to Didymus,* than whom no man wrote more books, that, when he denied a certain story, as unworthy of belief, his own book containing it was laid before him. 21. This occurs chiefly in fabulous stories, descending even to what is ridiculous, and sometimes licentious; whence every unprincipled grammarian has the liberty of inventing many of his comments, so that he may lie with safety concerning whole books and authors, as it may occur to him, for writers that never existed cannot be produced against him. In the better known class of authors

* He is said by Athenæus, iv. p. 139, to have written three thousand five hundred books; by Seneca, Ep. 88, four thousand.

they are often exposed by the curious. Hence it shall be accounted by me among the merits of a grammarian *to be ignorant of some things.*

CHAPTER IX.

Commencement of composition, § 1. Æsop's fables, 2. Sentences, *chriæ*, *ethologiæ*, 3, 4. Narratives from the poets, 5.

1. Two of the departments, which this profession undertakes, have now been concluded, namely, *the art of speaking correctly*, and *the explanation of authors;* of which they call the one *methodice* and the other *historice*. Let us add, however, to the business of the grammarian, some rudiments of the art of speaking, in which they may initiate their pupils while still too young for the teacher of rhetoric. 2. Let boys learn, then, to relate orally the fables of Æsop, which follow next after the nurse's stories, in plain language, not rising at all above mediocrity, and afterwards to express the same simplicity in writing. Let them learn, too, to take to pieces the verses of the poets, and then to express them in different words; and afterwards to represent them, somewhat boldly, in a paraphrase, in which it is allowable to abbreviate or embellish certain parts, provided that the sense of the poet be preserved. 3. He who shall successfully perform this exercise, which is difficult even for accomplished professors,* will be able to learn anything. Let *sentences*, also, and *chriæ*, and *ethologies*,† be written by

* I confess that I hesitate at this passage, doubting whether a work which is difficult even *consummatis professoribus*, can properly be imposed upon boys. I am inclined to think, therefore, that those words must be taken as an ablative rather than a dative, in the sense of "under the instruction of accomplished professors." Yet such construction is certainly harsh, and unlike that of Quintilian. *Spalding.*

† "A *sentence* is the enunciation of some general proposition, exhorting to something, or deterring from something, or showing what something is." Priscian, citing from Hermogenes, p. 1333, ed. Putsch. "What the Greeks call χρεία, is the relation of some saying or action, or of both together, showing its intention clearly, and having generally some moral instruction in view." Priscian, *ib.* p. 1332. "Of the ethologia," says Spalding, "we cannot find any such clear and exact definition." It seems to have been a description or illustration of the morals or character of a person.

the learner, with the occasions of the sayings added according to the grammarians, because these depend upon reading. The nature of all these is similar, but their form different; because a *sentence* is a general proposition; *ethology* is confined to certain persons. 4. Of *chriæ* several sorts are specified: one similar to a sentence, which is introduced with a simple statement, *He said*, or *He was accustomed to say:* another, which includes its subject in an answer: *He, being asked*, or, *when this remark was made to him, replied;* a third, not unlike the second, commences, *When some one had*, not *said*, but *done, something.* 5. Even in the acts of people some think that there is a *chria*, as, *Crates, having met with an ignorant boy, beat his tutor:* and there is another sort, almost like this, which, however, they do not venture to call by the same name, but term it a χρειῶδες; as, *Milo, having been accustomed to carry the same calf every day, ended by carrying a bull.** In all these forms the declension is conducted through the same cases,† and a reason may be given as well for acts as for sayings. Stories told by the poets should, I think, be treated by boys, not with a view to eloquence, but for the purpose of increasing their knowledge. Other exercises, of greater toil and ardour, the Latin teachers of rhetoric, by abandoning them, have rendered the necessary work of teachers of grammar. The Greek rhetoricians have better understood the weight and measure of their duties.

* This is an *example*, conveying something of the nature of moral instruction; it illustrates the effects of perseverance, and of the regular discharge of any duty.

† *Per eosdem casus.*] The margin of Gryphius has *per omnes casus*, and so Philander admonishes us to read. The *chria* might commence with any case; thus, *Cato dixit literarum radices amaras esse, fructus jucundiores. Catonis dictum fertur literarum*, &c. *Catoni hoc dictum tribuitur*, &c. *Catonem dixisse ferunt*, &c. *Te, Cato, dixisse* &c. *A Catone olim dictum est* &c.

CHAPTER X.

Of other studies preliminary to that of rhetoric, § 1. Necessity of them, 2—8. Authority of the ancients in favour of learning music, 9—16. Union of music with grammar, 17—21. Utility of music to the orator, 22—30. What sort of music to be studied, 31—33. Utility of geometry, 34—37. Geometrical proof, 38—45. Astronomy; examples of the benefit attending a knowledge of it, 46—49.

1. THESE remarks I have made, as briefly as I could, upon grammar, not so as to examine and speak of every thing, which would be an infinite task, but merely of the most essential points. I shall now add some concise observations on the other departments of study, in which I think that boys should be initiated before they are committed to the teacher of rhetoric, in order that that circle of instruction, which the Greeks call ἐγκύκλιος παιδεία, may be completed.

2. For about the same age the study of other accomplishments must be commenced; concerning which, as they are themselves arts, and cannot be complete without the art of oratory,* but are nevertheless insufficient of themselves to form an orator, it is made a question whether they are necessary to this art. 3. Of what service is it, say some people, for pleading a cause, or pronouncing a legal opinion, to know how equilateral triangles may be erected upon a given line? Or how will he, who has marked the sounds of the lyre by their

* *Et esse perfectæ sine orandi scientiâ non possunt.*] Burmann. and most of the recent editors, have *et esse perfecta sine his orandi scientia non potest*, from a conjecture of Regius. Five manuscripts, says Burmann, omit the *non* before *possunt*. But Spalding's reading, which is that of the majority of the best manuscripts, seems to be right. Burmann's would set aside all necessity for the following question: *an sint huic operæ necessariæ, quæritur:* if the art of oratory could not be perfect without those other arts or sciences, there would be no need of inquiring whether those arts or sciences were necessary to the art of oratory. What Quintilian says is, that those arts or sciences cannot be perfect without the art of oratory, that is, that the art of oratory is necessary to them, and that it is then to be inquired whether they are necessary to the art of oratory. Spalding's explanation is, that some knowledge of language, or the art of oratory, is necessary to the understanding and teaching of the arts; mathematics, for instance, cannot be clearly and efficiently taught or studied without the aid of correct language.

names and intervals, defend an accused person, or direct consultations, the better on that account? 4. They may perhaps reckon, also, many speakers, effective in every way in the forum, who have never attended a geometrician, and who know nothing of musicians except by the common pleasure of listening to them. To these observers I answer in the first place (what Cicero also frequently remarks in his book addressed to Brutus*), that it is not such an orator as is or has been, that is to be formed by us, but that we have conceived in our mind an idea of *the perfect orator*, an orator deficient in no point whatever. 5. For when the philosophers would form their *wise man*, who is to be perfect in every respect, and, as they say, a kind of mortal god, they not only believe that he should be instructed, in a general knowledge of divine and human things, but conduct him through a course of questions which are certainly little, if you consider them merely in themselves, (as, sometimes, through studied subtleties of argument,) not because questions about *horns*† or *crocodiles*‡ can form a wise man, but because a wise man ought never to be in error even in the least matters. 6. In like manner, it is not the geometrician, or the musician, or the other studies which I shall add to theirs, that will make the perfect orator (who ought to be a wise man), yet these accomplishments will contribute to his perfection. We see an antidote, for example, and other medicines to heal diseases and wounds, compounded of many and sometimes opposite ingredients, from the various qualities of which results that single compound, which resembles none of them,§ yet takes its peculiar virtues from them

* See the Orator ad M. Brutum, c. 1 and 29.

† *Ceratinæ.*] *Sc. quæstiones, captiones, ambiguitates.* Puzzling questions, which seem to have had their name from the following syllogism: "You have what you have not lost; but you have not lost horns; therefore you have horns." See Sen. Ep. Lib. v., and Politian, Miscell. c. 54.

‡ *Crocodilinæ.*] Named from the following question: A crocodile, having seized a woman's son, said that he would restore him to her, if she would tell him truth; she replied, "you will not restore him;" ought the crocodile to have restored the child or not?

§ *Earum.*] There is nothing in the text to which this word can properly be referred; Spalding supposes that *herbis* has been lost from between *effectibus* and *componi*, and that *quorum* should be altered into *quarum*.

all; 7. mute insects, too, compose the exquisite flavour of honey, inimitable by human reason, of various sorts of flowers and juices; and shall we wonder that eloquence, than which the providence of the gods has given nothing more excellent to men, requires the aid of many arts, which, even though they may not appear, or put themselves forward, in the course of a speech, yet contribute to it a secret power, and are silently felt? 8. "People have been eloquent," some one may say, "without these arts;" but I want a perfect orator. "They contribute little assistance," another may observe; but that, to which even little shall be wanting, will not be a whole; and it will be agreed that perfection is a whole, of which though the hope may be on a distant height as it were, yet it is for us to suggest every means of attaining it, that something more, at least, may thus be done. But why should our courage fail us? Nature does not forbid the formation of a perfect orator; and it is disgraceful to despair of what is possible.

9. For myself, I could be quite satisfied with the judgment of the ancients; for who is ignorant that music (to speak of that science first) enjoyed, in the days of antiquity, so much, not only of cultivation, but of reverence, that those who were musicians were deemed also prophets and sages, as, not to mention others, *Orpheus* and *Linus*, both of whom are transmitted to the memory of posterity as having been descended from the gods, and the one, because he soothed the rude and barbarous minds of men by the wonderful effect of his strains, as having drawn after him not only wild beasts, but even rocks and woods. 10. Timagenes* declares that music was the most ancient of sciences connected with literature; an opinion to which the most celebrated poets give their support, according to whom the praises of gods and heroes used to be sung to the lyre at royal banquets. Does not Virgil's Iopas, too, sing *errantem lunam solisque labores*, "the wandering moon, and labours of the sun;" the illustrious poet thus plainly asserting that music is united with the knowledge of

* A friend of Asinius Pollio, mentioned also x. 1, 75. He was disliked by Augustus for his freedom of speech, but was distinguished for his merits as a historian. See L. Seneca de Irâ, c. 23; M. Seneca, Controv. xxxiv.; and Vossius, who has collected many particulars concerning him, de Hist. Græc. i. 24. *Spalding.*

divine things? If this position be granted, music will be necessary also for the orator; for, as I observed,* this part of learning, which, after being neglected by orators, has been taken up by the philosophers, was a portion of our business, and, without the knowledge of such subjects, there can be no perfect eloquence.

12. Nor can any one doubt that men eminently renowned for wisdom have been cultivators of music, when Pythagoras, and those who followed him, spread abroad the notion, which they doubtless received from antiquity, that the world itself was constructed in conformity with the laws of music, which the lyre afterwards imitated. 13. Nor were they content, moreover, with that concord of discordant elements, which they call ἁρμονία, "harmony," but attributed even sound to the celestial motions; for Plato, not only in certain other passages, but especially in his Timæus, cannot even be understood except by those who have thoroughly imbibed the principles of this part of learning. What shall I say, too, of the philosophers in general, whose founder, Socrates himself, was not ashamed, even in his old age, to learn to play on the lyre? 14. It is related that the greatest generals used to play on the harp and flute, and that the troops of the Lacedæmonians were excited with musical notes. What other effect, indeed, do horns and trumpets produce in our legions, since the louder is the concert of their sounds, so much greater is the glory of the Romans than that of other nations in war? 15. It was not without reason, therefore, that Plato thought music necessary for a man who would be qualified for engaging in government, and whom the Greeks call πολιτικός. Even the chiefs of that sect which appears to some extremely austere, and to others extremely harsh, were inclined to think that some of the wise might bestow a portion of their attention on this study. Lycurgus, also, the maker of most severe laws for the Lacedæmonians, approved of the study of music. 16. Nature herself, indeed, seems to have given music to us as a benefit, to enable us to endure labours with greater facility; for musical sounds cheer even the rower; and it is not only in those works, in which the efforts of many, while some pleasing voice leads them, conspire together, that music is of avail, but the toil even of people at work by themselves finds

* Procem. sect. 14.

itself soothed by song, however rude.* 17. I appear, however, to be making a eulogy on this finest of arts, rather than connecting it with the orator. Let us pass lightly over the fact, then, that grammar and music† were once united; since Archytas and Aristoxenus, indeed, thought grammar comprehended under music;‡ and that they themselves were teachers of both arts, not only Sophron§ shows, (a writer, it is true, only of mimes, but one whom Plato so highly valued, that he is said to have had his books under his head when he was dying,) but also Eupolis, whose Prodamus‖ teaches both music and grammar, and Maricas, that is to say, Hyperbolus, confesses that *he knows nothing of music but letters.* 18. Aristophanes, also, in more than one of his comedies,¶ shows that boys were accustomed to be thus instructed in times of old; and, in the Hypobolimæus** of Menander, an old man, laying before a father, who is claiming a son from him, an account as it were of the expenses that he had bestowed upon his education, says

* Verse sweetens toil, however rude the sound;
All at her work the village maiden sings;
Nor, while she turns the giddy wheel around,
Revolves the sad vicissitudes of things.

Repeated, from a forgotten volume of poems, by Johnson to Boswell.

"Croonin' to a body's sel',"

said Burns,

"Does weel eneugh."

† The ancients regarded chiefly the origin of the word *musice* (from μοῦσαι), bestowing it on whatever contributed to the cultivation of the mind; as *gymnastice* comprehended all that formed the exercise of the body. These departments of instruction for youth are, however, frequently mentioned, as by Xenophon de Republ. Lacedæm., γράμματα, μουσική, καὶ τὰ ἐν παλαίστρᾳ. *Spalding.*

‡ Music being understood in the sense given to it in the preceding note, grammar would be a portion of it.

§ On Sophron, see Fabric. Bibl. Gr. p. 493, ed. Harles; and Smith's Biog. and Mythol. Dictionary.

‖ Whether Prodamus was the name of a comedy, as Meursius thinks, may be doubted; he was perhaps only one of the characters in a drama. But that Maricas was the name of a comedy of Eupolis, is well agreed among authors. There is an allusion to it in the Clouds of Aristophanes, ver. 553, who intimates that the play was written to expose Hyperbolus, a pestilent demagogue. *Spalding.*

¶ *Non uno libro.*] Spalding conjectures *loco.* That it is the dramatist Aristophanes who is meant, he says, there can be no doubt; but what writer has ever applied the word *liber* to a play?

** The Supposititious Son.

that *he has paid a great deal to musicians and geometers.* 19. Hence too it was customary at banquets that the lyre should be handed round after the meal; and Themistocles, on confessing that he knew not how to play, "was accounted," to use the words of Cicero, "but imperfectly educated." Among the Romans, likewise, it was usual to introduce lyres and flutes at feasts. The verses of the Salii also have their tune; and these customs, as they were all established by Numa, prove that not even by those, who seem to have been rude and given to war, was the cultivation of music neglected, as far as that age admitted it. 21. It passed at length, indeed, into a proverb among the Gauls, that *the uneducated had no commerce either with the Muses or the Graces.*

22. But let us consider what peculiar advantage he who is to be an orator may expect from music. Music has two kinds of measures, the one in the *sounds of the voice,** the other in the *motions of the body;* for in both a certain due regulation is required. Aristoxenus the musician divides all that belongs to the voice into ἐυθμός, "rhythm," and μέλος ἔμμετρον, "melody in measure;" of which the one consists in *modulation*, the other in *singing* and tunes.† Are not all these‡ qualifications, then, necessary to the orator, the one of which relates to gesture, the second to the collocation of words, and the third to the inflexions of the voice, which in speaking are extremely numerous? 23. Such is undoubtedly the case, unless we suppose, perchance, that a regular structure and smooth combination of words is requisite only in poems and songs, and is superfluous in making a speech; or that composition and modulation§ are not to be varied in speaking, as in music, according to the nature of the subject. 24. Music,

* Quintilian is here speaking only with reference to an orator.

† The one being μέλος ἄμετρον, like that of an Æolian harp, free and unmeasured melody; the other, the melody of any regular tune or measure.

‡ He refers to all the parts of music that he has mentioned since the commencement of sect. 22; and these parts are three; the silent music of graceful motion, the music of well arranged words, and music in the modulation of the voice. *Spalding.*

§ *Compositio et sonus.*] Spalding hesitates at the word *compositio*, and would willingly eject it from the text, not seeing how it differs from *copulatio* immediately preceding. *Compositio*, however, seems to refer to the due blending of sounds; *copulatio* to the junction of words without reference to their sounds.

however, by means of the tone and modulation of the voice, expresses sublime thoughts with grandeur, pleasant ones with sweetness, and ordinary ones with calmness, and sympathises in its whole art with the feelings attendant on what is expressed. 25. In oratory, accordingly, the raising, lowering, or other inflexion of the voice, tends to move the feelings of the hearers; and we try to excite the indignation of the judges in one modulation of phrase* and voice, (that I may again use the same term,†) and their pity in another; for we see that minds are affected in different ways even by musical instruments, though no words cannot be uttered by them.

26. A graceful and becoming motion of the body, also, which the Greeks call *εὐρυθμία*, is necessary, and cannot be sought from any other art than music; a qualification on which no small part of oratory depends, and for treating on which a peculiar portion of our work is set apart.‡ If an orator shall pay extreme attention to his voice, what is so properly the business of music? But neither is this department of my work to be anticipated; so that we must confine ourselves, in the mean time, to the single example of Caius Gracchus, the most eminent orator of his time, behind whom, when he spoke in public, a musician used to stand, and to give, with a pitch-pipe, which the Greeks call *τονάριον*, the tones in which his voice was to be exerted. 28. To this he attended even in his most turbulent harangues, both when he frightened the patricians, and after he began to fear them.

For the sake of the less learned, and those, as they say, "of a duller muse," I would wish to remove all doubt of the utility of music. 29. They will allow, assuredly, that the poets should be read by him who would be an orator; but are they,§ then, to be read without a knowledge of music? If any one is so blind of intellect, however, as to hesitate about the reading of other poets, he will doubtless admit that those should

* *Collocationis.*] That is, *collocationis verborum,* phraseology or style.

† Whether by "same term" he means *voice* or *modulation* it is not easy to decide; but I think *modulation. Spalding.*

‡ Book xi. c. 3. As he is to treat fully on the subject there, he will not anticipate here.

§ The student will observe that the *hi* and *illos* in the text are to be construed thus: *num igitur hi sine musice* legendi? and *illos certè* concesserit *legendos,* &c. Spalding proposes alterations, but without necessity. By *music* is meant a knowledge of metre and melody.

be read who have written poems for the lyre. 30. On these matters I should have to enlarge more fully, if I recommended this as a new study; but since it has been perpetuated from the most ancient times, even from those of Chiron and Achilles to our own, (among all, at least, who have not been averse to a regular course of mental discipline,) I must not proceed to make the point doubtful by anxiety to defend it. 31. Though I consider it sufficiently apparent, however, from the very examples which I have now given, what music pleases me, and to what extent, yet I think that I ought to declare more expressly, that that sort of music is not recommended by me, which, prevailing at present in the theatres, and being of an effeminate character, languishing with lascivious notes, has in a great degree destroyed whatever manliness was left among us; but those strains in which the praises of heroes were sung, and which heroes themselves sung; not the sounds of psalteries and languishing lutes,* which ought to be shunned even by modest females, but the knowledge of the principles of the art, which is of the highest efficacy in exciting and allaying the passions. 32. For Pythagoras, as we have heard, calmed a party of young men, when urged by their passions to offer violence to a respectable family, by requesting the female musician, who was playing to them, to change her strain to a spondaic measure;† and Chrysippus assigns a peculiar tune for the lullaby‡ of nurses, which is used with children. 33. There is also a subject for declamation in the schools, not unartfully invented, in which it is supposed that a flute-player,§ who had played a Phrygian‖ tune to a priest while he was sacri-

* *Psalteria—spadicas.*] He means, if I am not mistaken, instruments of an extremely effeminate character, rendered so by the extraordinary number of strings. *Spalding.* Of the *spadix* nothing is known but that it was a stringed instrument, named, probably, from the wood (*spadix, a palm-branch*) of which it was made, Pollux iv. 59. Aul. Gell. iii. 9.

† Which was more grave and solemn.

‡ *Allectationi.*] We can hardly think this word genuine. Hemsterhusius conjectured *lallationi*, from *lallare*, "to sing lullaby." See Spalding's notes.

§ *Ponitur tibicen—accusari.*] Spalding very justly observes that the construction, and the general usage of the verb *pono* with reference to subjects of declamation, require *tibicinem;* unless *accusari* be altered to *accusatus*, which would be on the whole a less eligible emendation.

‖ How exciting the Phrygian measure was may be seen in Jamblichus's Life of Pythagoras, c. 25. It was first used in the enthusiastic

ficing, is accused, after the priest has been driven to madness, and has thrown himself over a precipice, of having been the cause of his death; and if such causes have to be pleaded by an orator, and cannot be pleaded without a knowledge of music, how can even the most prejudiced forbear to admit that this art is necessary to our profession?

34. As to *geometry*, people admit that some attention to it is of advantage in tender years; for they allow that the thinking powers are excited, and the intellect sharpened by it, and that a quickness of perception is thence produced; but they fancy that it is not, like other sciences, profitable after it has been acquired, but only whilst it is being studied. 35. Such is the common opinion respecting it. But it is not without reason that the greatest men have bestowed extreme attention on this science; for as geometry is divided between numbers and figures, the knowledge of *numbers*, assuredly, is necessary not only to an orator, but to every one who has been initiated even in the rudiments of learning. In pleading causes, it is very often in request; when the speaker, if he hesitates, I do not say about the amount of a calculation, but if he even betray, by any uncertain or awkward movement of his fingers, a want of confidence in his calculations, is thought to be but imperfectly accomplished in his art. 36. The knowledge of *linear figures*, too, is frequently required in causes; for law-suits occur concerning boundaries and measures. But geometry has a still greater connexion with the art of oratory.

37. Order, in the first place, is necessary in geometry; and is it not also necessary in eloquence? Geometry proves what follows from what precedes, what is unknown from what is known; and do we not draw similar conclusions in speaking? Does not the well known mode of deduction from a number of proposed questions consist almost wholly in syllogisms? Accordingly you may find more persons to say that geometry is allied to logic, than that it is allied to rhetoric. 38. But even an orator, though rarely, will yet at times prove logically, for he will use syllogisms if his subject shall require them, and will of necessity use the enthymem, which is a rhetorical syllogism. Besides, of all proofs, the strongest are what are

sacred ceremonies of the Phrygian or Berecynthian mother. Lucian in his Harmonides, near the beginning, mentions τὸ ἔνθεον, "the divine fury," of the Phrygian melody. *Spalding.*

called geometrical demonstrations;* and what does oratory make its object more indisputably than proof?

Geometry often, moreover, by demonstration, proves what is apparently true to be false. This is also done with respect to numbers, by means of certain figures which they call ψευδογραφίαι,† and at which we were accustomed to play when we were boys. But there are other questions of a higher nature. For who would not believe the asserter of the following proposition: "Of whatever places the boundary lines measure the same length, of those places the areas also, which are contained by those lines, must necessarily be equal?" 40. But this proposition is fallacious; for it makes a vast difference what figure the boundary lines may form; and historians, who have thought that the dimensions of islands are sufficiently indicated by the space traversed in sailing round them, have been justly censured by geometricians.‡ 41. For the nearer to perfection any figure is, the greater is its capacity; and if the boundary line, accordingly, shall form a circle, which of all plane figures is the most perfect, it will embrace a larger area than if it shall form a square of equal circumference. Squares, again, contain more than triangles of equal circuit, and triangles themselves contain more when their sides are equal than when they are unequal. 42. Some other examples may perhaps be too obscure; let us take an instance most easy of comprehension even to the ignorant. There is scarcely any man who does not know that the dimensions of an acre extend two hundred and forty feet in length, and the half of that number in breadth; and what its circumference is, and how much ground it contains, it is easy to calculate. 43. A figure of a hundred and eighty feet on each side, however, has the same periphery, but a much larger area contained within its four sides. If any one thinks it too much trouble to make the calculation, he may learn the same truth by means of smaller numbers. Ten feet, on each side of a square, will give forty for the circumference, and a hundred for the area; but if

* Or "linear demonstrations." Compare v. 10, 7.

† Of these no example is to be found.

‡ "Of such censure," says Spalding, "I find no instance among the authors of antiquity, though Pithœus, in his note on this passage, says that Polybius and Thucydides were blamed on that account by Proclus in his commentary on Euclid's Elements." He adds that he has searched in the passages indicated by Pithœus, to no purpose.

there were fifteen feet on each side, and five at each end, they would, with the same circuit, deduct a fourth part from the area inclosed. 44. If, again, nineteen feet be extended in parallel lines, only one foot apart, they will contain no more squares than those along which the parallels shall be drawn; and yet the periphery will be of the same extent as that which incloses a hundred. Thus the further you depart from the form of a square, the greater will be the loss to the area. 45. It may therefore happen even that a smaller area may be inclosed by a greater periphery than a larger one.* Such is the case in plane figures; for on hills, and in valleys, it is evident even to the untaught that there is more ground than sky.†

46. Need I add that geometry raises itself still higher, so as even to ascertain the system of the world? When it demonstrates, by calculations, the regular and appointed movements of the celestial bodies, we learn that, in that system, there is nothing unordained or fortuitous; a branch of knowledge which may be sometimes of use to the orator. 47. When Pericles freed the Athenians from fear, at the time that they were alarmed by an eclipse of the sun, by explaining to them the causes of the phænomenon; or when Sulpicius Gallus, in the army of Paulus Æmilius, made a speech on an eclipse of the moon, that the minds of the soldiers might not be terrified as by a supernatural prodigy, do they not, respectively, appear to have discharged the duty of an orator? 48. Had Nicias been possessed of such knowledge in Sicily, he would not have been confounded with similar terror, and have given over to destruction the finest of the Athenian armies; as Dion, we know, when he went to overthrow the tyranny of Dionysius, was not deterred by a similar phænomenon. 49. Though the utility of geometry in war, however, be put out of the question, though we do not dwell upon the fact that Archimedes alone protracted the siege of Syracuse to a great extent, it is sufficient, assuredly, to establish what I assert, that numbers of questions, which it is difficult to solve by any other

* Thus a right-angled triangle, whose base is 8 feet, perpendicular 6 feet, and hypotenuse 10 feet, will contain 24 square feet within a periphery of 24 feet; while a parallelogram 12 feet long, and 1 foot broad, will contain only 12 square feet within a periphery of 26 feet.

† Supposing the sky to be a flat surface.

method, as those about the mode of dividing, about division to infinity, and about the rate of progressions, are accustomed to be solved by those geometrical demonstrations; so that if an orator has to speak (as the next book* will show) on all subjects, no man, assuredly, can become a perfect orator without a knowledge of geometry.

CHAPTER XI.

Instruction to be received from the actor, § 1—3. He should correct faults of pronunciation, 4—8. He should give directions as to look and gesture, 9—11. Passages from plays should be recited by the pupil, 12, 13. Passages also from speeches, 14. Exercises of the palæstra to be practised, 15—19.

1. Some time is also to be devoted to the actor,† but only so far as the future orator requires the art of delivery; for I do not wish the boy, whom I educate for this pursuit, either to be broken to the shrillness of a woman's voice, or to repeat the tremulous tones of an old man's. 2. Neither let him imitate the vices of the drunkard, nor adapt himself to the baseness of the slave; nor let him learn to display the feelings of love, or avarice, or fear; acquirements which are not at all necessary to the orator, and which corrupt the mind, especially while it is yet tender and uninformed in early youth; for frequent imitation settles into habit. It is not even every gesture or motion that is to be adopted from the actor: for though the orator ought to regulate both to a certain degree, yet he will be far from appearing in a theatrical character, and will exhibit nothing extravagant either in his looks, or the movements of his hands, or his walk;‡ for if there is any art used by speakers in these points, the first object of it should be that it may not appear to be art.

* Ch. 21.

† *Comœdo.*] Properly a comic actor; but I have thought it sufficient to translate it by "actor" simply. "The comic actors," observes Turnebus, "were eminently skilled in the gestures requisite for good delivery."

‡ *Excursionibus.*] By *excursio* Quintilian means *procursio*, or "stepping forward," in which the orator ought to indulge but seldom, and only for a moment, that he may not appear *discurrere*, "to run up and down." *Turnebus.*

4. What is then the duty of the teacher as to these particulars? Let him, in the first place, correct faults of pronunciation, if there be any, so that the words of the learner may be fully expressed, and that every letter may be uttered with its proper sound. For we find inconvenience from the two great weakness or too great fulness of the sound of some letters; some, as if too harsh for us, we utter but imperfectly, or change them for others, not altogether dissimilar, but, as it were, smoother. 5. Thus λ takes the place of ϱ, in which even Demosthenes found difficulty, (the nature of both which letters is the same also with us,) and when *c*, and similarly *g*, are wanting in full force, they are softened down into *t* and *d*.* 6. Those niceties about the letter *s*,† such a master will not even tolerate; nor will he allow his pupil's words to sound in his throat, or to rumble as from emptiness of the mouth; nor will he (what is utterly at variance with purity of speaking) permit him to overlay the simple sound of a word with a fuller sort of pronunciation, which the Greeks call καταπεπλασμένον: a term by which the sound of flutes is also designated, when, after the holes are stopped through which they sound the shrill notes, they give forth a bass sound through the direct outlet only.

8. The teacher will be cautious, likewise, that concluding syllables be not lost; that his pupil's speech be all of a similar character; that whenever he has to raise his voice, the effort may be that of his lungs, and not of his head; that his gesture may be suited to his voice, and his looks to his gesture. 9. He will have to take care, also, that the face of his pupil, while speaking, look straight forward; that his lips be not distorted; that no opening of the mouth immoderately distend his jaws; that

* As in the imperfect pronunciation of children, who, instead of *cura*, would say *tura*, instead of *Galba*, *Dalba*. This softening of expression is ridiculed by Lucian in his Δίκη Φωνηέντων. *Spalding.*

† I freely confess myself ignorant what those niceties were, as I have found no passage among the ancients in which they are noticed. There is a quotation from Ælius Dionysius, however, which Hemsterhusius ad Lucian. Judic. Vocalium adduces from Eustathius ad Il. K. p. 813: "Ælius Dionysius says," remarks Eustathius, "that Pericles was reported to have disliked the configuration of the mouth in pronouncing the letter sigma, as widening it ungracefully, and to have exercised himself in uttering it before a looking-glass." By the "niceties," therefore, may be meant an affected suppression of the hiss in pronouncing the letter. *Spalding.*

his face be not turned up, or his eyes cast down too much, or his head inclined to either side. 10. The face offends in various ways; I have seen many speakers, whose eye-brows were raised at every effort of the voice; those of others I have seen contracted; and those of some even disagreeing, as they turned up one towards the top of the head, while with the other the eye itself was almost concealed. To all these matters, as we shall hereafter show, a vast deal of importance is to be attached; for nothing can please which is unbecoming.

12. The actor will also be required to teach how a narrative should be delivered; with what authority persuasion should be enforced; with what force anger may show itself; and what tone of voice is adapted to excite pity. This instruction he will give with the best effect, if he select particular passages from plays, such as are most adapted for this object, that is, such as most resemble pleadings. 13. The repetition of these passages will not only be most beneficial to pronunciation, but also highly efficient in fostering eloquence. 14. Such may be the pupil's studies while immaturity of age will not admit of anything higher; but, as soon as it shall be proper for him to read orations, and when he shall be able to perceive their beauties, then, I would say, let some attentive and skilful tutor attend him, who may not only form his style by reading, but oblige him to learn select portions of speeches by heart, and to deliver them standing, with a loud voice, and exactly as he will have to plead; so that he may consequently exercise by pronunciation both his voice and memory.

15. Nor do I think that those orators are to be blamed who have devoted some time even to the masters in the palæstra. I do not speak of those by whom part of life is spent among oil, and the rest over wine, and who have oppressed the powers of the mind by excessive attention to the body; (such characters I should wish to be as far off as possible from the pupil that I am training;) 16. but the same name* is given to those by whom gesture and motion are formed; so that the arms may be properly extended; that the action of the hands may not be ungraceful or unseemly; that the attitude may not be unbecoming; that there may be no awkwardness in advancing the feet; and that the head and eyes may not be at variance

* That is the name of *palæstrici*, *palæstricis*, which precedes, being, as Spalding observes, of the masculine, not of the neuter, gender.

with the turn of the rest of the body. 17. For no one will deny that all such particulars form a part of delivery, or will separate delivery itself from oratory; and, assuredly, the orator must not disdain to learn what he must practise, especially when this *chironomia*, which is, as is expressed by the word itself, the *law of gesture*, had its origin even in the heroic ages, and was approved by the most eminent men of Greece, even by Socrates himself; it was also regarded by Plato as a part of the qualifications of a public man, and was not omitted by Chrysippus in the directions which he wrote concerning the education of children. 18. The Lacedæmonians, we have heard, had, among their exercises, a certain kind of dance, as contributing to qualify men for war. Nor was dancing thought a disgrace to the ancient Romans; as the dance which continues to the present day, under the sanction and in the religious rites of the priests, is a proof; as is also the remark of Crassus in the third book of Cicero *de Oratore*, where he recommends that an orator *should adopt a bold and manly action of body, not learned from the theatre and the player, but from the camp, or even from the palæstra;* the observation of which discipline has descended without censure even to our time. 19. By me, however, it will not be continued beyond the years of boyhood, nor in them long; for I do not wish the gesture of an orator to be formed to resemble that of a dancer, but I would have some influence from such juvenile exercises left, so that the gracefulness communicated to us while we were learning may secretly attend us when we are not thinking of our movements.

CHAPTER XII.

No fear to be entertained lest boys should be engaged in too many studies, if judgment be used; examples of the number of things to which the human mind can attend at once, § 1—7. Boys endure study with spirit and patience, 8—11. Abundance of time for all necessary acquirements, 12—15. Unreasonable pretexts for not pursuing study, 16—19.

1. It is a common question whether, supposing all these things are to be learned, they can all be taught and acquired at the same time; for some deny that this is possible, as the

mind must be confused and wearied by so many studies of different tendency for which neither the understanding, nor the body, nor time itself, can suffice; and even though mature age may endure such labour, yet that of childhood ought not to be thus burdened.

2. But these reasoners do not understand how great the power of the human mind is; that mind which is so busy and active, and which directs its attention, so to speak, to every quarter, so that it cannot even confine itself to do only one thing, but bestows its force upon several, not merely in the same day, but at the same moment. 3. Do not players on the harp, for example, exert their memory, and attend to the sound of their voice, and the various inflexions of it, while, at the same time, they strike part of the strings with their right hand, and pull, stop, or let loose others with their left, while not even their foot is idle, but beats time to their playing, all these acts being done simultaneously? 4. Do not we advocates, when surprised by a sudden necessity to plead, say one thing while we are thinking of what is to follow, and while, at the very same moment, the invention of arguments, the choice of words, the arrangement of matter, gesture, delivery, look, and attitude, are necessarily objects of our attention? If all these considerations, of so varied a nature, are forced, as by a single effort, before our mental vision, why may we not divide the hours of the day among different kinds of study, especially as variety itself refreshes and recruits the mind, while, on the contrary, nothing is more annoying than to continue at one uniform labour? Accordingly writing is relieved by reading, and the tedium of reading itself is relieved by changes of subject. 5. However many things we may have done, we are yet to a certain degree fresh for that which we are going to begin. Who, on the contrary, would not be stupified, if he were to listen to the same teacher of any art, whatever it might be, through the whole day? But by change a person will be recruited; as is the case with respect to food, by varieties of which the stomach is re-invigorated, and is fed with several sorts less unsatisfactorily than with one. Or let those objectors tell me what other mode there is of learning. Ought we to attend to the teacher of grammar only, and then to the teacher of geometry only, and cease to think, during the second course, of what we learned in the first? Should we

then transfer ourselves to the musician, our previous studies being still allowed to escape us? Or while we are studying Latin, ought we to pay no attention to Greek? Or, to make an end of my questions at once, ought we to do nothing but what comes last before us? 7. Why, then, do we not give similar counsel to husbandmen, that they should not cultivate at the same time their fields and their vineyards, their olives and other trees, and that they should not bestow attention at once on their meadows, their cattle, their gardens, and their bee-hives? Why do we ourselves devote some portion of our time to our public business, some to the wants of our friends, some to our domestic accounts, some to the care of our persons, and some to our pleasures, any one of which occupations would weary us, if we pursued it without intermission? So much more easy is it to do many things one after the other, than to do one thing for a long time.

8. That boys will be unable to bear the fatigue of many studies, is by no means to be apprehended; for no age suffers less from fatigue. This may perhaps appear strange; but we may prove it by experience. 9. For minds, before they are hardened, are more ready to learn; as is proved by the fact that children, within two years after they can fairly pronounce words, speak almost the whole language, though no one incites them to learn; but for how many years does the Latin tongue resist the efforts of our purchased slaves! You may well understand, if you attempt to teach a grown up person to read, that those who do everything in their own art with excellence, are not without reason called παιδομαθεῖς, that is, "instructed from boyhood." 10. The temper of boys is better able to bear labour than that of men; for, as neither the falls of children, with which they are so often thrown on the ground, nor their crawling on hands and knees, nor, soon after, constant play, and running all day hither and thither, inconvenience their bodies so much as those of adults, because they are of little weight, and no burden to themselves, so their minds likewise, I conceive, suffer less from fatigue, because they exert themselves with less effort, and do not apply to study by putting any force upon themselves, but merely yield themselves to others to be formed. 11. Moreover, in addition to the other pliancy of that age, they follow their teachers, as it were, with greater confidence, and do not set themselves to

measure what they have already done. Consideration about labour* is as yet unknown to them; and, as we ourselves have frequently experienced, toil has less effect upon the powers than thought.†

12. Nor will they ever, indeed, have more disposable time; because all improvement at this age is from hearing. When the pupil shall retire by himself to write, when he shall produce and compose from his own mind, he will then either not have leisure, or will want inclination, to commence such exercises as I have specified. 13. Since the teacher of grammar, therefore, cannot occupy the whole day, and indeed ought not to do so, lest he should disgust the mind of his pupil, to what studies can we better devote his fragmentary intervals, so to term them, of time? 14. For I would not wish the pupil to be worn out in these exercises; nor do I desire that he should sing, or accompany songs with musical notes, or descend to the minutest investigations of geometry. Nor would I make him like an actor in delivery, or like a dancing-master in gesture; though, if I did require all such qualifications, there would still be abundance of time; for the immature part of life, which is devoted to learning, is long; and I am not speaking of slow intellects 15. Why did Plato, let me ask, excel in all these branches of knowledge which I think necessary to be acquired by him who would be an orator? He did so, because, not being satisfied with the instruction which Athens could afford, or with the science of the Pythagoreans, to whom he had sailed in Italy, he went also to the priests of Egypt, and learned their mysteries.

16. We shroud our own indolence under the pretext of difficulty; for we have no real love of our work; nor is eloquence

* *Laboris judicium.*] When they are told to execute any task, they do not reflect, like people of maturer years, and try to form a *judgment*, whether it is worth while to do it or not, but set about it at once. I take this to be the sense of the words. The French translator, in Didot's edition, renders them, "ils ne connaissent pas encore ce que c'est que le veritable travail."

† *Minus afficit sensus fatigatio quàm cogitatio.*] I see that these words are not understood by some. *Cogitatio* applies to him who produces something from his own mind; *fatigatio* to him who merely executes the orders of others, whether by labour of body or of mind. *Spalding.* The French translator follows Spalding's interpretation: "il est moins pénible de remplir une tâche donnée, que de produire de soi-même."

ever sought by us, because it is the most honourable and noble of attainments, or for its own sake; but we apply ourselves to labour only with mean views and for sordid gain. 17. Plenty of orators may speak in the forum, with my permission, and acquire riches also, without such accomplishments as I recommend; only may every trader in contemptible merchandise be richer than they, and may the public crier make greater profit by his voice! I would not wish to have even for a reader of this work a man who would compute what returns his studies will bring him. 18. But he who shall have conceived, as with a divine power of imagination, the very idea itself of genuine oratory, and who shall keep before his eyes true eloquence, *the queen*, as an eminent poet calls her, *of the world*, and shall seek his gain, not from the pay that he receives for his pleadings, but from his own mind, and from contemplation and knowledge, a gain which is enduring and independent of fortune, will easily prevail upon himself to devote the time, which others spend at shows, in the Campus Martius, at dice, or in idle talk, to say nothing of sleep and the prolongation of banquets, to the studies of geometry and music; and how much more pleasure will he secure from such pursuits than from unintellectual gratifications! 19. For divine providence has granted this favour to mankind, that the more honourable occupations are also the more pleasing. But the very pleasure of these reflections has carried me too far. Let what I have said, therefore, suffice concerning the studies in which a boy is to be instructed before he enters on more important occupations; the next book will commence, as it were, a new subject, and enter on the duties of the teacher of rhetoric.

BOOK II.

CHAPTER I.

Boys are not put under the professor of rhetoric early enough; reasons why they should begin to receive instruction from him at an earlier age, § 1—3. The professions of the grammarian and teacher of rhetoric should be in some degree united, 4—13.

1. It has been a prevalent custom (which daily gains ground more and more) for pupils to be sent to the teachers of eloquence, to the Latin teachers always, and to the Greeks sometimes, at a more advanced age than reason requires. Of this practice there are two causes: that the rhetoricians, especially our own, have relinquished a part of their duties, and that the grammarians have appropriated what does not belong to them. 2. The rhetoricians think it their business merely to declaim, and to teach the art and practice of declaiming, confining themselves, too, to deliberative and judicial subjects,* (for others they despise as beneath their profession,) while the grammarians, on their part, do not deem it sufficient to have taken what has been left them, (on which account also gratitude should be accorded them,) but encroach even upon *prosopopeiæ*† and suasory‡ speeches, in which even the very greatest efforts of eloquence are displayed. 3. Hence, accordingly, it has happened, that what was the first business of the one art has become the last of the other, and that boys of an age to be employed in higher departments of study remain sunk in the lower school, and

* The other department of eloquence, the demonstrative or *epideictic*, which ought to command the attention of rhetoricians, they despise. Thus in the speeches of Seneca the father, we see only *suasoriæ* and *controversiæ*, deliberative and judicial addresses; and in the declamations circulated under the name of Quintilian we find nothing but mere *controversiæ*. *Spalding*. Quintilian would have narratives, or statements of facts, eulogies, and invectives, to form part of the first exercises in rhetoric, as will appear hereafter. *Capperonier*.

† By *prosopopeiæ* we must here understand speeches suited to the characters of persons by whom they are supposed to have been spoken. Quintilian speaks of them in b. ii. c. 8. *Regius*. Such are the speeches in Livy and other historians. *Turnebus*.

‡ *Suasorias*.] Speeches of the kind which they call *deliberative*, differing from *controversiæ*, which is a term properly applied only to *judicial* pleadings. *Capperonier*. The term *suasoriæ* included both *persuasory* and *dissuasory* speeches.

practise rhetoric under the grammarian. Thus, what is eminently ridiculous, a youth seems unfit to be sent to a teacher of declamation until he already knows how to declaim.

4. Let us assign each of these professions its due limits. Let *grammar*, (which, turning it into a Latin word, they have called *literatura*, "literature,") know its own boundaries, especially as it is so far advanced beyond the humility indicated by its name, to which humility the early grammarians restricted themselves; for, though but weak at its source, yet, having gained strength from the poets and historians,* it now flows on in a full channel; since, besides the art of speaking correctly, which would otherwise be far from a comprehensive art, it has engrossed the study of almost all the highest departments of learning; 5. and let not *rhetoric*, to which the power of eloquence has given its name, decline its own duties, or rejoice that the task belonging to itself is appropriated by another; for while it neglects its duties, it is almost expelled from its domain. 6. I would not deny, indeed, that some of those who profess grammar, may make such progress in knowledge as to be able to teach the principles of oratory; but, when they do so, they will be discharging the duties of a rhetorician, and not their own.

7. We make it also a subject of inquiry, when a boy may be considered ripe for learning what rhetoric teaches. In which inquiry it is not to be considered of what age a boy is, but what progress he has already made in his studies. That I may not make a long discussion, I think that the question *when a boy ought to be sent to the teacher of rhetoric*, is best decided by the answer, *when he shall be qualified*. 8. But this very point depends upon the preceding subject of consideration; for if the office of the grammarian is extended even to suasory speeches, the necessity for the rhetorician will come later. If the rhetorician, however, does not shrink from the earliest duties of his profession, his attention is required even from the time when the pupil begins narrations,† and produces his little exercises in praising and blaming. 9. Do we not know that it was a kind of exercise among the ancients, suitable for improvement in eloquence, for

* Whom the grammarians undertake to explain and illustrate. *Capperonier.*

† *A narrationibus statim.*] Beware of taking *à* for *post*. *Spalding.*

pupils to speak on *theses*,* *common places*,† and other questions, (without embracing particular circumstances or persons,) on which causes, as well real as imaginary, depend? Hence it is evident how dishonourably the profession of rhetoric has abandoned that department which it held originally,‡ and for a long time solely. 10. But what is there among those exercises, of which I have just now spoken,§ that does not relate both to other matters peculiar to rhetoricians, and, indisputably, to the sort of causes pleaded in courts of justice? Have we not to make statements of facts in the forum? I know not whether that department of rhetoric is not most of all in request there. 11. Are not eulogy and invective often introduced in those disputations? Do not common places, as well those which are levelled against vice, (such as were composed, we read, by Cicero,‖) as those in which questions are discussed generally, (such as were published by Quintus Hortensius, as, *Ought we to trust to light proofs?* and *for witnesses* and *against witnesses*,) mix themselves with the inmost substance of causes? 12. These weapons are in some degree to be prepared, that we may use them whenever circumstances

* By this term Quintilian means *quæstiones infinitæ*, on either side of which a rhetorician may speak with plausibility. This kind of exercise was in use in Cicero's time, when what we now call *declamationes*, as Seneca observes, were called *theses*. Turnebus. *Theses*, or *quæstiones infinitæ*, are questions or topics not circumscribed by any particulars relating to persons, places, or times; *theses* being thus distinguished from *hypotheses*. Capperonier. See ii. 4, 24; iii. 5, 5, 7; Cic. Orat. c. 14, 36; Topic. c. 21. *Spalding.*

† "*Communes loci*," says Turnebus, "are general disquisitions on points of morality; or questions on points of law, on which the speaker might take either the affirmative or negative side;" as *how far we ought to trust witnesses*, or *what credit should be given to written documents*.

‡ Suetonius observes that the old rhetoricians employed themselves greatly in *progymnasmata*. Turnebus.

§ He means at the end of sect. 8. *Spalding.*

‖ Gesner very properly refers to the end of the preface to the *Paradoxes*, where Cicero observes that he used, for the sake of exercise, to occupy himself about the Θετικὰ of the schools, that is, on questions having no reference to particular circumstances or persons. . . . . But whether "we read" should be understood as signifying that Quintilian had himself read Cicero's compositions, or that he had merely seen some reference to them in some other writer, we have nothing to enable us to decide. The latter supposition appears to me the more probable. *Spalding.*

require. He who shall suppose that these matters do not concern the orator, will think that a statue is not begun when its limbs are cast.* Nor let any one blame this haste of mine (as some will consider it) on the supposition that I think the pupil who is to be committed to the professor of rhetoric is to be altogether withdrawn from the teachers of grammar. 13. To these also their proper time shall be allowed, nor need there be any fear that the boy will be overburdened with the lessons of two masters. His labour will not be increased, but that which was confounded under one master will be divided; and each tutor will thus be more efficient in his own province. This method, to which the Greeks still adhere, has been disregarded by the Latin rhetoricians, and, indeed, with some appearance of excuse, as there have been others to take their duty.†

CHAPTER II.

Choice of a teacher, § 1—4. How the teacher should conduct himself towards his pupils, 5—8. How the pupils should behave, 9—13. Some additional observations, 14, 15.

1. As soon therefore as a boy shall have attained such proficiency in his studies, as to be able to comprehend what we have called the first precepts of the teachers of rhetoric, he must be put under the professors of that art.

2. Of these professors the morals must first be ascertained; a point of which I proceed to treat in this part of my work, not because I do not think that the same examination is to be made, and with the utmost care, in regard also to other teachers, (as indeed I have shown in the preceding book,‡) but because the very age of the pupils makes attention to the matter still more necessary. 3. For boys are consigned to these professors when almost grown up, and continue their studies under them even after they are become men; and greater care

* See Aristotle's Rhetoric, i. 16.

† Namely the grammarians who continue their instruction even after pupils are put under the rhetorician.

‡ See c. 5.

must in consequence be adopted with regard to them, in order that the purity of the master may secure their more tender years from corruption, and his authority deter their bolder age from licentiousness. 4. Nor is it enough that he give, in himself, an example of the strictest morality, unless he regulate, also, by severity of discipline, the conduct of those who come to receive his instructions.

Let him adopt, then, above all things, the feelings of a parent towards his pupils, and consider that he succeeds to the place of those by whom the children were entrusted to him. 5. Let him neither have vices in himself, nor tolerate them in others. Let his austerity not be stern, nor his affability too easy, lest dislike arise from the one, or contempt from the other. Let him discourse frequently on what is honourable and good, for the oftener he admonishes, the more seldom will he have to chastise. Let him not be of an angry temper, and yet not a conniver at what ought to be corrected. Let him be plain in his mode of teaching, and patient of labour, but rather diligent in exacting tasks than fond of giving them of excessive length. 6. Let him reply readily to those who put questions to him, and question of his own accord those who do not. In commending the exercises of his pupils, let him be neither niggardly nor lavish; for the one quality begets dislike of labour, and the other self-complacency. 7. In amending what requires correction, let him not be harsh, and, least of all, not reproachful; for that very circumstance, that some tutors blame as if they hated, deters many young men from their proposed course of study. Let him every day say something, and even much, which, when the pupils hear, they may carry away with them, for though he may point out to them, in their course of reading, plenty of examples for their imitation, yet *the living voice*, as it is called, feeds the mind more nutritiously, and especially the voice of the teacher, whom his pupils, if they are but rightly instructed, both love and reverence. How much more readily we imitate those whom we like, can scarcely be expressed.

9. The liberty of standing up and showing exu ation. n giving applause,* as is done under most teachers, is by no means to be allowed to boys; for the approbation even of young men,

* Not to the master, but to one another, as Spalding observes, and as appears from what follows.

when they listen to others, ought to be but temperate. Hence it will result that the pupil will depend on the judgment of the master, and will think that he has expressed properly whatever shall have been approved by him. 10. But that most mischievous *politeness*, as it is now termed, which is shown by students in their praise of each other's compositions, whatever be their merits, is not only unbecoming and theatrical,* and foreign to strictly regulated schools, but even a most destructive enemy to study, for care and toil may well appear superfluous, when praise is ready for whatever the pupils have produced. 11. Those therefore who listen, as well as he who speaks, ought to watch the countenance of the master, for they will thus discern what is to be approved and what to be condemned; and thus power will be gained from composition, and judgment from being heard.† 12. But now, eager and ready, they not only start up at every period, but dart forward, and cry out with indecorous transports. The compliment is repaid in kind, and upon such applause depends the fortune of a declamation; and hence result vanity and self-conceit, insomuch that, being elated with the tumultuous approbation of their class-fellows, they are inclined, if they receive but little praise from the master, to form an ill opinion of him. 13. But let masters, also, desire to be heard themselves with attention and modesty; for the master ought not to speak to suit the taste of his pupils, but the pupils to suit that of the master. If possible, moreover, his attention should be directed to observe what each pupil commends in his speeches, and for what reason; and he may then rejoice that what he says will give pleasure, not more on his own account than on that of his pupils who judge with correctness.

14. That mere boys should sit mixed with young men, I do not approve; for though such a man as ought to preside over their studies and conduct, may keep even the eldest of his pupils under control, yet the more tender ought to be separate from the more mature, and they should all be kept

* Such as is given by spectators in the theatre; see i. 2, 9. *Spalding.* Quintilian appears also to intimate the *insincerity* of the applause.

† *Sic stilo facultas continget, auditione judicium.*] The *style* meant is that of the speaker or reciter himself, who brings with him from home a written speech, which is the *auditio* or "recitation heard" by his fellow-students that form the audience. *Spalding.*

free, not merely from the guilt of licentiousness, but even from the suspicion of it. 15. This point I thought proper briefly to notice; that the master and his school should be clear of gross vice, I do not suppose it necessary to intimate. And if there is any father who would not shrink from flagrant vice in choosing a tutor for his son, let him be assured that all other rules, which I am endeavouring to lay down for the benefit of youth, are, when this consideration is disregarded, useless to him.

CHAPTER III.

A pupil should be put under an eminent teacher at first, not under an inferior one, § 1—3. Mistakes of parents as to this point, 3, 4. The best teacher can teach little things best, as well as great ones, 5—9. The pupils of eminent teachers will afford better examples to each other, 10—12.

1. Nor is the opinion of those to be passed in silence, who, even when they think boys fit for the professor of rhetoric, imagine that he is not at once to be consigned to the most eminent, but detain him for some time under inferior teachers, with the notion that moderate ability in a master is not only better adapted for beginning instruction in art, but easier for comprehension and imitation, as well as less disdainful of undertaking the trouble of the elements. 2. On this head I think no long labour necessary to show how much better it is to be imbued with the best instructions, and how much difficulty is attendant on eradicating faults which have once gained ground, as double duty falls on succeeding masters, and the task indeed of unteaching is heavier and more important than that of teaching at first. 3. Accordingly they say that Timotheus, a famous instructor in playing the flute, was accustomed to ask as much more pay from those whom another had taught as from those who presented themselves to him in a state of ignorance. The mistakes committed in the matter, however, are two; one, that people think inferior teachers sufficient for a time, and, from having an easily satisfied appetite, are content with their instructions; (such supineness, though deserving of reprehension, would yet be

in some degree endurable, if teachers of that class taught only worse, and not less;) the other, which is even more common, that people imagine that those who have attained eminent qualifications for speaking will not descend to inferior matters, and that this is sometimes the case because they disdain to bestow attention on minuter points, and sometimes because they cannot give instruction in them. 5. For my part, I do not consider him, who is unwilling to teach little things,* in the number of preceptors; but I argue that the ablest teachers can teach little things best, if they will; first, because it is likely that he who excels others in eloquence, has gained the most accurate knowledge of the means by which men attain eloquence; 6. secondly, because method,† which, with the best qualified instructors, is always plainest, is of great efficacy in teaching; and lastly, because no man rises to such a height in greater things that lesser fade entirely from his view. Unless indeed we believe that though Phidias made a Jupiter well, another might have wrought, in better style than he, the accessories to the decoration of the work; or that an orator may not know how to speak; or that an eminent physician may be unable to cure trifling ailments.

7. Is there not then, it may be asked, a certain height of eloquence too elevated for the immaturity of boyhood to comprehend it? I readily confess that there is; but the eloquent professor must also be a man of sense, not ignorant of teaching, and lowering himself to the capacity of the learner; as any fast walker, if he should happen to walk with a child, would give him his hand, relax his pace, and not go on quicker than his companion could follow. 8. What shall be said, too, if it generally happens that instructions given by the most learned are far more easy to be understood, and more perspicuous than those of others? For perspicuity is the chief virtue of eloquence, and the less ability a man has, the more he tries to raise and swell himself out,‡ as those of short stature exalt themselves on tip-toe,§ and the weak use most

* Comp. i. 4, 23.

† *Ratio.*] *Ratio* is the same as *theoria;* opposed to *praxis. Spalding.* Quintilian means *method;* and intimates that the more learned teacher will be more methodical, the less learned less methodical. *Turnebus.*

‡ *Dilatare.*] In allusion, perhaps, to the fable of the frog and the ox, Phædr. i. 24. *Spalding.*

§ *Staturâ breves in digitos eriguntur.*] An illustration borrowed by

threats. 9. As to those whose style is inflated, displaying a vitiated taste, and who are fond of sounding words,* or faulty from any other mode of vicious affectation, I am convinced that they labour under the fault, not of strength, but of weakness, as bodies are swollen, not with health, but with disease, and as men who have erred from the straight road generally make stoppages.† Accordingly, the less able a teacher is, the more obscure will he be.

10. It has not escaped my memory, that I said in the preceding book,‡ (when I observed that education in schools was preferable to that at home,) that pupils commencing their studies, or but little advanced in them, devote themselves more readily to imitate their school-fellows than their master, such imitation being more easy to them. This remark may be understood by some in such a sense, that the opinion which I now advocate may appear inconsistent with that which I advanced before. 11. But such inconsistency will be far from me; for what I then said is the very best of reasons why a boy should be consigned to the best possible instructor, because even the pupils under him, being better taught than those under inferior masters, will either speak in such a manner as it may not be objectionable to imitate, or, if they commit any faults, will be immediately corrected, whereas the less learned teacher will perhaps praise even what is wrong, and cause it, by his judgment, to recommend itself to those

Johnson in his Life of Gray, who, he says, is "tall by walking on tiptoe."

* *Tumidos, et corruptos, et tinnulos.*] The *tumidi* are those who are foolishly ambitious of sublimity; the *corrupti*, those who are always aiming to say something witty or clever; the *tinnuli*, those who seek for fine-sounding words and phrases. *Rollin.*

† *Devertunt.*] *Devertunt in hospitia*, go to seek lodging for the night, and thus arrive at a later period at their place of destination, which, if they had kept to the right road, they might have reached on the day on which they started. *Spalding.* An obscure passage, and perhaps not free from unsoundness. The second comparison, like the first, ought to indicate something wrong lying hid under the appearance of what is right. . . . We may suppose that those who have quitted the right track, seek for *deverticula*, bye-roads, for the sake of amusing themselves, or of shortening the remainder of their journey. *Rollin.* The reader may use his judgment as to which of these two illustrations is to be preferred. That of Rollin may receive something like support from Liv. ix. 7: *Et legentibus velut deverticula amœna—quærerem.*

‡ C. 2, sect. 26.

who listen to it. 12. Let a master therefore be excellent as well in eloquence as in morals; one who, like Homer's Phœnix,* may teach his pupil at once to speak and to act.

CHAPTER IV.

Elementary exercises, § 1. Narratives, or statements of facts, 2—4. Exuberance in early compositions better than sterility, 4—8. A teacher should not be without imagination, or too much given to find fault with his pupil's attempts, 8—14. The pupil's compositions should be written with great care, 15—17. Exercises in confirmation and refutation, 18, 19. In commendation and censure of remarkable men, 20—21. Common places, 22, 23. Theses, 24, 25. Reasons, 26. Written preparations for pleadings, 27—32. Praise and censure of particular laws, 33—40. Declamations on fictitious subjects a later invention, 41, 42.

I SHALL now proceed to state what I conceive to be the first duties of rhetoricians in giving instruction to their pupils, putting off for a while the consideration of what is alone called, in common language, *the art of rhetoric;* for to me it appears most eligible to commence with that to which the pupil has learned something similar under the grammarians.

2. Since of *narrations*, (besides that which we use in pleadings,) we understand that there are three kinds; the *fable*,† which is the subject of tragedies and poems,‡ and which is remote, not merely from truth, but from the appearance of truth;§ the *argumentum*, which comedies represent, and which, though false, has a resemblance to truth;‖ and the *history*, in which is contained a relation of facts; and since we have consigned poetic narratives to the grammarians,¶

* Iliad, ix. 432.

† Or mythological subject.

‡ That is *epic* poems, in which we find much that is at variance, not only with truth, but with probability; narratives which Aristotle in his Poetics calls *ἄλογα, ἀδύνατα. Capperonier.*

§ As the fables of Atreus and Thyestes, Medea, Iphigenia, and all the stories of metamorphoses. Cic. Rhetor. i. 19. *Camerarius.*

‖ As approaching nearer to nature and the real events of life.

¶ Book i. c. 4.

let the historical form the commencement of study under the rhetorician; a kind of narrative which, as it has more of truth, has also more of substance. 3. What appears to me the best method of narrating, I will show when I treat of the judicial part of pleading.* In the meantime it will suffice to intimate that it ought not to be dry and jejune, (for what necessity would there be to bestow so much pains upon study, if it were thought sufficient to state facts without dress or decoration?) nor ought it to be erratic, and wantonly adorned with far-fetched descriptions, in which many speakers indulge with an emulation of poetic licence. 4. Both these kinds of narrative are faulty; yet that which springs from poverty is worse than that which comes from exuberance.

From boys perfection of style can neither be required nor expected; but the fertile genius, fond of noble efforts, and conceiving at times a more than reasonable degree of ardour, is greatly to be preferred. Nor, if there be something of exuberance in a pupil of that age, would it at all displease me. I would even have it an object with teachers themselves to nourish minds that are still tender with more indulgence, and to allow them to be satiated, as it were, with the milk of more liberal studies. The body, which mature age may afterwards nerve, may for a time be somewhat plumper than seems desirable. 6. Hence there is hope of strength; while a child that has the outline of all his limbs exact commonly portends weakness in subsequent years. Let that age be daring, invent much, and delight in what it invents, though it be often not sufficiently severe and correct. The remedy for exuberance is easy; barrenness is incurable by any labour. 7. That temper in boys will afford me little hope in which mental effort is prematurely restrained by judgment. I like what is produced to be extremely copious, profuse even beyond the limits of propriety. Years will greatly reduce superfluity; judgment will smooth away much of it; something will be worn off, as it were, by use, if there be but metal from which something may be hewn and polished off, and such metal there will be, if we do not make the plate too thin at first, so that deep cutting may break it. 8. That I hold such opinions concerning this age, he will be less likely to

* Book iv. c. 2.

wonder who shall have read what Cicero* says: "I wish fecundity in a young man to give itself full scope."

Above all, therefore, and especially for boys, *a dry master* is to be avoided, not less than a dry soil, void of all moisture, for plants that are still tender. Under the influence of such a tutor, they at once become dwarfish, looking as it were towards the ground, and daring to aspire to nothing above every day talk. To them, leanness is in place of health, and weakness instead of judgment; and, while they think it sufficient to be free from fault, they fall into the fault of being free from all merit. Let not even maturity itself, therefore, come too fast; let not the must, while yet in the vat, become mellow, for so it will bear years, and be improved by age

10. Nor is it improper for me, moreover, to offer this admonition; that the powers of boys sometimes sink under too great severity in correction; for they despond, and grieve, and at last hate their work, and, what is most prejudicial, while they fear every thing, they cease to attempt any thing. 11. There is a similar conviction in the minds of the cultivators of trees in the country, who think that the knife must not be applied to tender shoots, as they appear to shrink from the steel, and to be unable as yet to bear an incision. 12. A teacher ought therefore to be as agreeable as possible, that remedies, which are rough in their own nature, may be rendered soothing by gentleness of hand; he ought to praise some parts of his pupils' performances, to tolerate some, and to alter others, giving his reasons why the alterations are made; and also to make some passages clearer by adding something of his own. It will also be of service too at times, for the master to dictate whole subjects himself, which the pupil may imitate and admire for the present as his own. 13. But if a boy's composition were so faulty as not to admit of correction, I have found him benefited whenever I told him to write on the same subject again, after it had received fresh treatment from me, observing that "he could do still better," since study is cheered by nothing more than hope. 14. Different ages, however, are to be corrected in different ways, and work is to be required and amended according to the degree of the pupil's abilities. I used to say to boys when

* De Orat. ii. 21.

they attempted any thing extravagant or verbose, that "I was satisfied with it for the present, but that a time would come when I should not allow them to produce compositions of such a character." Thus they were satisfied with their abilities, and yet not led to form a wrong judgment.

15. But that I may return to the point from which I digressed, I should wish *narrations* to be composed with the utmost possible care; for as it is of service to boys at an early age, when their speech is but just commenced, to repeat what they have heard in order to improve their faculty of speaking; (let them accordingly be made, and with very good reason, to go over their story again, and to pursue it from the middle, either backwards or forwards; but let this be done only while they are still at the knees of their teacher, and, as they can do nothing else, are beginning to connect words and things, that they may thus strengthen their memory;) so, when they shall have attained the command of pure and correct language, extemporary garrulity, without waiting for thought, or scarcely taking time to rise,* is the offspring of mere ostentatious boastfulness. 16. Hence arises empty exultation in ignorant parents, and in their children contempt of application, want of all modesty, a habit of speaking in the worst style, the practice of all kinds of faults, and, what has often been fatal even to great proficiency, an arrogant conceit of their own abilities. 17. There will be a proper time for acquiring facility of speech, nor will that part of my subject be lightly passed over by me; but in the mean time it will be sufficient if a boy with all his care, and with the utmost application of which that age is capable, can write something tolerable. To this practice let him accustom himself, and make it natural to him. He only will succeed in attaining the eminence at which we aim, or the point next below it, who shall learn to speak correctly before he learns to speak rapidly.

18. To *narrations* is added, not without advantage, the task of refuting and confirming them, which is called ἀνασκευὴ and κατασκευή.† This may be done, not only with regard to

* *Vix surgendi mora.*] They scarcely allow themselves time to rise from their seat before they begin to speak. *Capperonier.*

† The meaning of these terms is pretty well intimated by Quintilian himself; ἀνασκευὴ is *refutation*, and κατασκευὴ is *assertion*. Turnebus. More concerning them may be seen in Aphthonius.

fabulous subjects, and such as are related in poetry, but with regard even to records in our own annals; as if it be inquired *whether it is credible that a crow settled upon the head of Valerius when he was fighting, to annoy the face and eyes of his Gallic enemy with his beak and wings*,* there will be ample matter for discussion on both sides of the question; 19. as there will also be concerning *the serpent, of which Scipio is said to have been born*,† as well as about *the wolf of Romulus*, and *the Egeria of Numa*. As to the histories of the Greeks, there is generally licence in them similar to that of the poets. Questions are often wont to arise, too, concerning the time or place at which a thing is said to have been done; sometimes even about a person; as Livy, for instance, is frequently in doubt, and other historians differ one from another.

20. The pupil will then proceed by degrees to higher efforts, *to praise illustrious characters* and *censure the immoral;* an exercise of manifold advantage; for the mind is thus employed about a multiplicity and variety of matters; the understanding is formed by the contemplation of good and evil. Hence is acquired, too, an extensive knowledge of things in general; and the pupil is soon furnished with *examples*, which are of great weight in every kind of causes, and which he will use as occasion requires. 21. Next succeeds exercise in *comparison, which of two characters is the better or the worse*, which, though it is managed in a similar way, yet both doubles the topics, and treats not only of the nature, but of the degrees of virtues and of vices. But on the management of praise and the contrary, as it is the third part of rhetoric, I shall give directions in the proper place.‡

22. *Common places*, (I speak of those in which, without specifying persons, it is usual to declaim against vices themselves, as against those of *the adulterer, the gamester, the licentious person*,) are of the very nature of speeches on trials and, if you add the name of an accused party, are real accusations. These, however, are usually altered from their treatment as general subjects to something specific, as when the subject of a declamation is *a blind adulterer, a poor gamester, a licentious old man*. 23. Sometimes also they have

* Livy, book vii.; Aul. Gell. ix. 2.
† Aul. Gell. vii. 1.
‡ B. iii. c. 7.

their use in a defence; for we occasionally speak in favour of *luxury* or *licentiousness*;* and a procurer or parasite is sometimes defended in such a way, that we advocate, not the person,† but the vice.

24. *Theses*, which are drawn from the comparison of things, as *whether a country or city life is more desirable*, and *whether the merit of a lawyer or a soldier is the greater*, are eminently proper and copious subjects for exercise in speaking, and contribute greatly to improvement, both in the province of persuasion and in discussions on trials. The latter of the two subjects just mentioned is handled with great copiousness by Cicero in his pleading for Muræna. 25. Such theses as the following, *whether a man ought to marry*, and *whether political offices should be sought*, belong almost wholly to the deliberative species, for, if persons be but added, they will be suasory.‡

26. My teachers were accustomed to prepare us for *conjectural causes*§ by a kind of exercise far from useless, and very pleasant to us, in which they desired us to investigate and show *why Venus among the Lacedæmonians was represented armed;* || *why Cupid was thought to be a boy, and winged, and armed with arrows and a torch*,¶ and questions of a similar nature, in which we endeavoured to ascertain the intention, or object about which there is so often a question in controversies. This may be regarded as a sort of *chria*.**

27. That such questions as those about witnesses, *whether we ought always to believe them*, and concerning arguments, whether we *ought to put any trust in trifling ones*, belong to

* Gesner observes that Cicero has done something of this kind in his oration for Cælius, though with great caution and modesty. There is certainly some palliation of those vices offered in c. 17—21. *Spalding.*

† For then it would cease to be a *locus communis*, and become a *cause*. Spalding.

‡ *Suasoriæ*, persuasory or dissuasory, *i.e.* deliberative.

§ In which it is inquired whether a thing is, or is not; why anything is as it is; with what intention anything was done. Such questions were said to belong to the *status conjecturalis*; see b. vii. c. 2. *Capperonier.*

|| The cause is said by Lactantius, Inst. Div. i. 20, to have been the bravery exhibited by the Spartan women on a certain occasion against the Messenians, when a temple was vowed to *Venus armata*.

¶ See Propert. ii. 9.

** See i. 9, 4.

forensic pleading, is so manifest that some speakers,* not undistinguished in civil offices, have kept them ready in writing, and have carefully committed them to memory, that, whenever opportunity should offer, their extemporary speeches might be decorated with them, as with ornaments fitted into them.† 28. By which practice, (for I cannot delay to express my judgment on the point,) they appeared to me to confess great weakness in themselves. For what can such men produce appropriate to particular causes, of which the aspect is perpetually varied and new? How can they reply to questions propounded by the opposite party? How can they at once meet objections, or interrogate a witness, when, even on topics of the commonest kind, such as are handled in most causes, they are unable to pursue the most ordinary thoughts in any words but those which they have long before prepared? 29. When they say the same things in various pleadings, their cold meat, as it were, served up over and over again, must either create loathing in the speakers themselves, or their unhappy household furniture, which, as among the ambitious poor, is worn out by being used for several different purposes, must, when detected so often by the memory of their hearers, cause a feeling of shame in them; 30. especially as there is scarcely any *common place* so *common*, which can incorporate well with any pleading, unless it be bound by some link to the peculiar question under consideration, and which will not show‡ that it is not so much inserted as attached; 31. either because it is unlike the rest, or because it is very frequently borrowed without reason, not because it is wanted, but because it is ready; as some speakers, for the sake of sentiment, introduce the most verbose common places, whereas it is from the subject itself that sentiments ought to arise. 32. Such remarks are ornamental and useful if they spring from the question, but every remark, however beautiful, unless it tends to gain the cause, is certainly superfluous, and sometimes

* As Hortensius; see ii. 1, 11. *Spalding.*

† *Emblematis.*] The word signifies anything that is inserted in or applied to any other thing. Thus in Cicero *emblemata* is used for ornaments attached to gold and silver vases, capable of being taken off at pleasure. *Rollin.*

‡ *Apparentque.*] The sense of the text is clear, but the construction obscure; nor has any satisfactory explanation or emendation of it been proposed.

even noxious. But this digression has been sufficiently prolonged.

33. The *praise* or *censure of laws* requires more mature powers, such as may almost suffice for the very highest efforts. Whether this exercise partakes more of the nature of deliberative or controversial oratory, is a point that varies according to the custom and right of particular nations. Among the Greeks the proposer of laws was called to plead before the judge; among the Romans it was customary to recommend or disparage a law before the public assembly.* In either case, however, few arguments, and those almost certain,† are advanced; for there are but three kinds of laws, relating to *sacred*, *public*, or *private rights*. 34. This division has regard chiefly to the commendation of a law,‡ as when the speaker extols it by a kind of gradation, because it is *a law*, because it is *public*, because it is *made to promote the worship of the gods*. 35. Points about which questions usually arise, are common to all laws;§ for a doubt may be started, either concerning the right of him who proposes the law, (as concerning that of *Publius Clodius who was accused of not having been properly created tribune*,‖) or concerning the validity of the proposal itself, a doubt which may refer to a variety of matters, as for

* Certain judges were appointed by the assembly of the people called *nomothetæ*, before whom the proposer of a new law had to appear and support it; his adversaries were the defenders of the old law which the new one would abrogate. *Spalding.*

† *Fere certa.*] In opposition to the particulars to which he alludes in the following section, *de quibus quæri solet, i.e., dubitari*. The arguments advanced in favour or condemnation of a law are generally such as can have but one tendency, that is, to prove the law to be either extremely good or extremely bad; they are very seldom such as can be turned to advantage on either side of the question. *Spalding.*

‡ It is only however the old law that can be thus praised; for the new, when it is proposed, is not properly a law. *Spalding.*

§ The points meant by Quintilian, says Spalding, are such as regard the mere form and mode of proposing or bringing forward a law; for whether a law was good or bad would appear from the nature and tendency of it.

‖ Clodius, being a patrician by birth, could not be made a tribune of the people, without having been first made a plebeian by adoption. Cicero maintained that his adoption had been irregular, Pro Domo, c. 13—17, where reference is also made to the *auspices* and to *three market-days;* on which the reader may consult Ernesti's Clavis. *Spalding.*

instance, *whether the proposal has been published on three market days*, or whether the law may be said to have been proposed, or to be proposed, *on an improper day*, or *contrary to protests*, or *to the auspices*, or *in any other way at variance with legitimate proceedings;* or *whether it be opposed to any law still in force.* 36. But such considerations do not enter into these early exercises, which are without any allusion to persons, times, or particular causes. Other points, whether treated in real or fictitious discussions, are much the same; for the fault of any law must be either *in words* or *in matter.* 37. As to words, it is questioned *whether they be sufficiently expressive;* or *whether there is any ambiguity in them;* as to matter, *whether the law is consistent with itself; whether it ought to have reference to past time*, or *to individuals.* But the most common inquiry is, *whether it be proper or expedient.* 38. Nor am I ignorant that of this inquiry many divisions are made by most professors; but I, under the term *proper*, include consistency with *justice*, *piety*, *religion*, and other similar virtues. The consideration of justice, however, is usually discussed with reference to more than one point; for a question may either be raised about the subject of the law, as *whether it be deserving of punishment or reward*, or about the *measure of reward or punishment*, to which an objection may be taken as well for being *too great* as *too little.* 39. Expediency, also, is sometimes determined by the nature of the measure, sometimes by the circumstances of the time. As to some laws, it becomes a question, *whether they can be enforced.* Nor ought students to be ignorant that laws are sometimes censured *wholly*, sometimes *partly*, as examples of both are afforded us in highly celebrated orations. 40. Nor does it escape my recollection that there are laws which are not proposed for perpetuity, but with regard to temporary honours or commands, such as the *Manilian* law, about which there is an oration of Cicero. But concerning these no directions can be given in this place; for they depend upon the peculiar nature of the subjects on which the discussion is raised, and not on any general consideration.

41. On such subjects did the ancients, for the most part, exercise the faculty of eloquence, borrowing their mode of argument, however, from the logicians. To speak on fictitious cases, in imitation of pleadings in the forum or in public coun-

cils, is generally allowed to have become a practice among the Greeks, about the time of Demetrius Phalereus. 42. Whether that sort of exercise was invented by him, I (as I have acknowledged also in another book*) have not succeeded in discovering; nor do those who affirm most positively that he did invent it, rest their opinion on any writer of good authority; but that the Latin teachers of eloquence commenced this practice towards the end of the life of Lucius Crassus, Cicero† tells us; of which teachers the most eminent was Plotius.

CHAPTER V.

Advantages of reading history and speeches, § 1—3. On what points in them the professor of rhetoric should lecture, 4—9. Faulty composition may sometimes be read, to exercise the pupil's judgment, 10—13. Usefulness of this exercise, 14—17. Best authors to be read at an early age, 18—20. The pupil should be cautious of imitating very ancient or very modern writers, 21—26.

1. But of the proper mode of declaiming I shall speak a little further on; in the mean while, as we are treating of the first rudiments of rhetoric, I should not omit, I think, to observe how much the professor would contribute to the advancement of his pupils, if, as the explanation of the poets is required from teachers of grammar, so he, in like manner, would exercise the pupils under his care in the reading of history, and even still more in that of speeches; a practice which I myself have adopted in the case of a few pupils, whose age required it,‡ and whose parents thought it would be serviceable to them. 2. But though I then deemed it an excellent method, two circumstances were obstructions to the

* If that acknowledgment was made in the book *De Causis Corruptæ Eloquentiæ*, it does not occur in the Dialogue which we have under that title. *Spalding.*

† De Orat. iii. 24. Concerning Plotius, see Suet. de Clar. Rhet. cap. 2; Seneca Rhet. p. 134 Bip.; Varro in fragm. p. 289 Bip.; Quintilian, xi. 3, 143. *Spalding.*

‡ For most of his pupils, according to the custom of the Romans, had come to Quintilian at too advanced an age. See c. 1, sect. 1 and 8. *Spalding.*

practice of it; that long custom had established a different mode of teaching and that they were mostly full-grown youths, who did not require that exercise, that were forming themselves on my model. 3. But though I should make a new discovery ever so late, I should not be ashamed to recommend it for the future. I know, however, that this is now done among the Greeks, but chiefly by assistant-masters, since the time would seem hardly sufficient, if the professors were always to lecture to each pupil as he read. 3. Such lecturing, indeed, as is given, that boys may follow the writing of an author easily and distinctly with their eyes, and such even as explains the meaning of every word, at all uncommon, that occurs, is to be regarded as far below the profession of a teacher of rhetoric.

5. But to point out the beauties of authors, and, if occasion ever present itself, their faults, is eminently consistent with that profession and engagement, by which he offers himself to the public as a master of eloquence, especially as I do not require such toil from teachers, that they should call their pupils to their lap, and labour at the reading of whatever book each of them may fancy. 6. For to me it seems easier, as well as far more advantageous, that the master, after calling for silence, should appoint some one pupil to read, (and it will be best that this duty should be imposed on them by turns.) that they may thus accustom themselves to clear pronunciation; 7. and then, after explaining the cause for which the oration was composed, (for so that which is said will be better understood,) that he should leave nothing unnoticed which is important to be remarked, either in the *thought* or the *language;* that he should observe what method is adopted in the *exordium* for conciliating the judge; what *clearness*, *brevity*, and apparent *sincerity*, is displayed in the *statement of facts;* what *design* there is in certain passages, and what well concealed *artifice;* (for that is the only true art in pleading which cannot be perceived except by a skilful pleader;) 8. what judgment appears in the *division* of the matter; how subtle and urgent is the *argumentation;* with what force the speaker excites, with what amenity he soothes: what severity is shown in his *invectives*, what urbanity in his *jests;* how he commands the feelings, forces a way into the understanding, and makes the opinions of the judges coincide with what he

asserts. 9. In regard to the *style*, too, he should notice any expression that is peculiarly appropriate, elegant, or sublime; when the *amplification* deserves praise; what quality is opposed to it, what phrases are happily *metaphorical*, what figures of speech are used, what part of the *composition* is smooth and polished, and yet manly and vigorous.

10. Nor is it without advantage, indeed, that inelegant and faulty speeches, yet such as many, from depravity of taste, would admire, should be read before boys, and that it should be shown how many expressions in them are inappropriate obscure, tumid, low, mean, affected, or effeminate; expressions which, however, are not only extolled by many readers, but, what is worse, are extolled for the very reason that they are vicious, 11. for straight-forward language, naturally expressed, seems to some of us to have nothing of genius; but whatever departs, in any way, from the common course, we admire as something exquisite; as, with some persons, more regard is shown for figures that are distorted, and in any respect monstrous, than for such as have lost none of the advantages of ordinary conformation. 12. Some, too, who are attracted by appearance, think that there is more beauty in men who are depilated and smooth, who dress their locks, hot from the curling-irons, with pins, and who are radiant with a complexion not their own, than unsophisticated nature can give; as if beauty of person could be thought to spring from corruption of manners.

13. Nor will the preceptor be under the obligation merely to teach these things, but frequently to ask questions upon them, and try the judgment of his pupils. Thus carelessness will not come upon them while they listen, nor will the instructions that shall be given fail to enter their ears; and they will at the same time be conducted to the end which is sought in this exercise, namely that they themselves may conceive and understand. For what object have we in teaching them, but that they may not always require to be taught?

14. I will venture to say that this sort of diligent exercise will contribute more to the improvement of students than all the treatises of all the rhetoricians that ever wrote; which doubtless, however, are of considerable use, but their scope is more general; and how indeed can they go into all kinds of questions that arise almost every day? 15. So, though

certain general precepts are given in the military art, it will yet be of far more advantage to know what plan any leader has adopted wisely or imprudently, and in what place or at what time; for in almost every art precepts are of much less avail than practical experiments. 16. Shall a teacher declaim that he may be a model to his hearers, and will not Cicero and Demosthenes, if read, profit them more? Shall a pupil, if he commits faults in declaiming, be corrected before the rest, and will it not be more serviceable to him to correct the speech of another? Indisputably; and even more agreeable; for every one prefers that others' faults should be blamed rather than his own. 17. Nor are there wanting more arguments for me to offer; but the advantage of this plan can escape the observation of no one; and I wish that there may not be so much unwillingness to adopt it as there will be pleasure in having adopted it.*

18. If this method be followed there will remain a question not very difficult to answer, which is, what authors ought to be read by beginners? Some have recommended inferior writers, as they thought them easier of comprehension; others have advocated the more florid kind of writers, as being better adapted to nourish the minds of the young. 19. For my part, I would have the best authors commenced at once, and read always; but I would choose the clearest in style, and most intelligible; recommending Livy, for instance, to be read by boys rather than Sallust, who, however, is the greater historian,† but to understand him there is need of some proficiency. 20. Cicero, as it seems to me, is agreeable even to beginners, and sufficiently intelligible, and may not only profit, but even be loved; and next to Cicero, (as Livy‡ advises,) such authors as most resemble Cicero.

21. There are two points in style on which I think that the greatest caution should be used in respect to boys: one is

* Gesner very judiciously observes that *fecisse* should be inserted in the text between *quàm* and *non displicebit*.

† There has been much discussion among critics as to whether *hic* in *hic historiæ major est auctor* is to be referred to Sallust or Livy; but that it ought to be referred to Sallust, will not be doubted, as Spalding observes, by any one who refers to Martial, xiv. 191; Vell. Pat. ii. 36; Tacit. Ann. iii. 30; Sen. Rhet. p. 274.

‡ Quintilian repeats this advice of Livy in x. 1, 39, where he says that it was given in a letter to his son. But the letter is lost. *Spalding.*

that no master, from being too much an admirer of antiquity, should allow them to harden, as it were, in the reading of the Gracchi, Cato,* and other like authors; for they would thus become uncouth and dry; since they cannot, as yet, understand their force of thought, and, content with adopting their style, which, at the time it was written, was doubtless excellent, but is quite unsuitable to our day, they will appear to themselves to resemble those eminent men. 22. The other point, which is the opposite of the former, is, lest, being captivated with the flowers of modern affectation, they should be so seduced by a corrupt kind of pleasure, as to love that luscious manner of writing which is the more agreeable to the minds of youth in proportion as it has more affinity with them. 23. When their taste is formed, however, and out of danger of being corrupted, I should recommend them to read not only the ancients, (from whom if a solid and manly force of thought be adopted, while the rust of a rude age is cleared off, our present style will receive additional grace,) but also the writers of the present day, in whom there is much merit. 24. For nature has not condemned us to stupidity, but we ourselves have changed our mode of speaking, and have indulged our fancies more than we ought; and thus the ancients did not excel us so much in genius as in severity or manner. It will be possible, therefore, to select from the moderns many qualities for imitation, but care must be taken that they be not contaminated with other qualities with which they are mixed. Yet that there have been recently, and are now, many writers whom we may imitate entirely, I would not only allow, (for why should I not?) but even affirm. 26. But who they are it is not for everybody to decide. We may even err with greater safety in regard to the ancients; and I would therefore defer the reading of the moderns, that imitation may not go before judgment.

* The speeches of the Gracchi are lost. Of the many books that Cato wrote none has survived but his treatise on agriculture.

CHAPTER VI.

In composition, the pupil should have but moderate assistance, not too much or too little.

1. THERE has been also a diversity of practice among teachers in the following respect. Some of them, not confining themselves to giving directions as to the division of any subject which they assigned their pupils for declamation, developed it more fully by speaking on it themselves, and amplified it not only with proofs but with appeals to the feelings. 2. Others, giving merely the first outlines, expatiated after the declamations were composed, on whatever points each pupil had omitted, and polished some passages with no less care than they would have used if they had themselves been rising to speak in public.

Both methods are beneficial; and, therefore, for my own part, I give no distinction to either of them above the other; but, if it should be necessary to follow only one of the two, it will be of greater service to point out the right way at first, than to recall those who have gone astray from their errors; 3. first, because to the subsequent emendation they merely listen, but the preliminary division they carry to their meditation and their composition; and, secondly, because they more willingly attend to one who gives directions than to one who finds faults. Whatever pupils, too, are of a high spirit,* are apt, especially in the present state of manners, to be angry at admonition, and offer silent resistance to it. 4. Not that faults are therefore to be less openly corrected; for regard is to be had to the other pupils, who will think that whatever the master has not amended is right. But both methods should be united, and used as occasion may require. To beginners should be given matter designed,† as it were, beforehand, in proportion to the abilities of each. But when they shall appear to have formed themselves sufficiently on their model,

* *Vivaciores.*] That is, says Spalding, *alacriores, animosiores,* supporting his opinion by several apt quotations. Capperonier unhappily thought that the word meant *ætate provectiores.*

† *Præformata.*] A metaphorical expression borrowed from architects, who sketch out their work either by *sciographia, ichnographia,* or *orthographia.* Turnebus.

a few brief directions may be given them, following which, they may advance by their own strength without any support. 6. It is proper that they should sometimes be left to themselves, lest, from the bad habit of being always led by the efforts of others, they should lose all capacity of attempting and producing anything for themselves. But when they seem to judge pretty accurately of what ought to be said, the labour of the teacher is almost at an end; though, should they still commit errors, they must be again put under a guide. 7. Something of this kind we see birds practise, which divide food, collected in their beaks, among their tender and helpless young ones; but, when they seem sufficiently grown, teach them, by degrees, to venture out of the nest, and flutter round their place of abode, themselves leading the way; and at last leave their strength, when properly tried, to the open sky and their own self-confidence.*

* Valerius Flaccus, vii. 375:

> Qualis adhuc teneros supremum pallida fœtus
> Mater ab excelso produxit in aëra nido,
> Hortaturque sequi, brevibusque insurgere pennis;
> Illos cœrulei primus ferit horror Olympi;
> Jamque redire rogant, adsuetaque quæritur arbor.

> As when the anxious dam her tender young
> Leads from their lofty nest to loftier skies,
> Bidding them follow her, and rise upborne
> On half-grown wings; the blue expanse, first tried,
> Strikes them with dread; they, fluttering, chirp for leave
> Back to return, and seek th' accustom'd tree.

Of which lines the germ, as Burmann remarks, is found in Ovid, Met. viii. 213:

> Velut ales ab alto
> Quæ teneram prolem produxit in aëra nido,
> Hortaturque sequi.

The simile is very happily adopted by Goldsmith:

> And as a bird each fond endearment tries,
> To lure her new-fledged offspring to the skies.

CHAPTER VII.

Pupils should not always declaim their own compositions, but sometimes passages from eminent writers.

1. One change, I think, should certainly be made in what is customary with regard to the age of which we are speaking. Pupils should not be obliged to learn by heart what they have composed, and to repeat it, as is usual, on a certain day, a task which it is fathers that principally exact, thinking that their children then only study when they repeat frequent declamations; whereas proficiency depends chiefly on the diligent cultivation of style. 2. For though I would wish boys to compose, and to spend much time in that employment, yet, as to learning by heart, I would rather recommend for that purpose select passages from orations or histories, or any other sort of writings deserving of such attention. 3. The memory will thus be more efficiently exercised in mastering what is another's than what is their own; and those who shall have been practised in this more difficult kind of labour, will fix in their minds, without trouble, what they themselves have composed, as being more familiar* to them; they will also accustom themselves to the best compositions, and they will always have in their memory something which they may imitate, and will, even without being aware, re-produce that fashion of style which they have deeply impressed upon their minds. 4. They will have at command, moreover, an abundance of the best words, phrases, and figures, not sought for the occasion, but offering themselves spontaneously, as it were, from a store treasured within them. To this is added the power of quoting the happy expressions of any author, which is agreeable in common conversation, and useful in pleading; for phrases which are not coined for the sake of the cause in hand have the greater weight, and often gain us more applause than if they were our own.

5. Yet pupils should sometimes be permitted to recite what they themselves have written, that they may reap the full reward of their labour from that kind of applause which is most

* Spalding retains *familiarius* in his text, but has no doubt that *familiaria*, given by Obrecht, is the true reading.

desired.* This permission will most properly be granted when they have produced something more polished than ordinary, that they may thus be presented with some return for their study, and rejoice that they have deserved to recite their composition.

CHAPTER VIII.

Variety of talent and disposition in pupils requires variety of treatment, § 1—5. How far an inclination for any particular line of study should be encouraged and cultivated, 6—15.

1. It is generally, and not without reason, regarded as an excellent quality in a master to observe accurately the differences of ability in those whom he has undertaken to instruct, and to ascertain in what direction the nature of each particularly inclines him; for there is in talent an incredible variety; nor are the forms of the mind fewer than those of the body. 2. This may be understood even from orators themselves, who differ so much from each other in their style of speaking, that no one is like another, though most of them have set themselves to imitate those whom they admired. 3. It has also been thought advantageous by most teachers to instruct each pupil in such a manner as to cherish by learning the good qualities inherited from nature, so that the powers may be assisted in their progress towards the object to which they chiefly direct themselves. As a master of palæstric exercises, when he enters a gymnasium full of boys, is able, after trying their strength and comprehension in every possible way, to decide for what kind of exercise each ought to be trained; 4. so a teacher† of eloquence, they say, when he has clearly observed which boy's genius delights most in a concise and

* That is, the applause of their fellow students. If they merely wrote, and did not recite, they would gain, as Spalding observes, the commendation of the master only.

† *Ita præceptorem.*] The accusative depends on something understood, which must be sought in the preceding *utile visum est, aiunt,* or something similar, being supplied. That Quintilian is repeating the opinion of others is shown by the subjunctives *evalescat, possit, faciat,* Spalding.

polished manner of speaking, and which in a spirited, or grave, or smooth, or rough, or brilliant, or elegant one, will so accommodate his instructions to each, that he will be advanced in that department in which he shows most ability; 5. because nature attains far greater power when seconded by culture; and he that is led contrary to nature, cannot make due progress in the studies for which he is unfit, and makes those talents, for the exercise of which he seemed born, weaker by neglecting to cultivate them.

6. This opinion seems to me (for to him that follows reason there is free exercise of judgment even in opposition to received persuasions) just only in part. To distinguish peculiarities of talent is absolutely necessary; and to make choice of particular studies to suit them, is what no man would discountenance. 7. For one youth will be fitter for the study of history than another; one will be qualified for writing poetry, another for the study of law, and some perhaps fit only to be sent into the fields. The teacher of rhetoric will decide in accordance with these peculiarities, just as the master of the *palæstra* will make one of his pupils a runner, another a boxer, another a wrestler, or fit him for any other of the exercises that are practised at the sacred games.

8. But he who is destined for public speaking must strive to excel, not merely in one accomplishment, but in all the accomplishments that are requisite for that art, even though some of them may seem too difficult for him when he is learning them; for instruction would be altogether superfluous if the natural state of the mind were sufficient. 9. If a pupil that is vitiated in taste, and turgid in his style, as many are, is put under our care, shall we allow him to go on in his own way? Him that is dry and jejune in his manner, shall we not nourish, and, as it were, clothe? For if it be necessary to prune something away from certain pupils, why should it not be allowable to add something to others? 10. Yet I would not fight against nature; for I do not think that any good quality, which is innate, should be detracted, but that whatever is inactive or deficient should be invigorated or supplied. Was that famous teacher Isocrates, whose writings are not stronger proofs that he spoke well, than his scholars that he taught well, inclined, when he formed such an opinion of Ephorus and Theopompus as to say that "*the one wanted the rein and the*

other the spur,"* to think that the slowness in the duller, and the ardour in the more impetuous, were to be fostered by education? On the contrary,† he thought that the qualities of each ought to be mixed with those of the other. 12. We must so far accommodate ourselves, however, to feeble intellects, that they may be trained only to that to which nature invites them; for thus they will do with more success the only thing which they can do. But if richer material fall into our hands, from which we justly conceive hopes of a true orator,‡ no rhetorical excellence must be left unstudied. 13. For though such a genius be more inclined, as indeed it must be, to the exercise of certain powers, yet it will not be averse to that of others, and will render them, by study, equal to those in which it naturally excelled; just as the skilful trainer in bodily exercise, (that I may adhere to my former illustration,) will not, if he undertakes to form a pancratiast, teach him to strike with his fist or his heel only, or instruct him merely in wrestling, or only in certain artifices of wrestling, but will practise him in everything pertaining to the pancratiastic art.

There may perhaps be some pupil unequal to some of these exercises. He must then apply chiefly to that in which he can succeed. 14. For two things are especially to be avoided; one, to attempt what cannot be accomplished; and the other, to divert a pupil from what he does well to something else for which he is less qualified. But if he be capable of instruction, the tutor, like Nicostratus whom we, when young, knew at an advanced age, will bring to bear upon him every art of instruction alike, and render him invincible, as Nicostratus was in wrestling and boxing,§ for success in both of which con-

* See Cic. de Orat. iii. 9; Brut. c. 56; also Quintil. x. 1, 74. Consult also Ruhnken, Historia Oratorum, p. 87. *Spalding.*

† *Quum—arbitraretur.*] I have taken a little liberty with this *quum*, on account of another preceding it. The sentence, if rendered with exact literalness, would hardly please the English reader. The scholar will easily see the sense.

‡ *In quâ meritò ad spem oratoris simus aggressi.*] "On which we have justly risen to the hope of an orator." "*Aggredi ad spem*," says Spalding, "for *se tollere in spem*; and *in quâ* for *quâ oblatâ, cujus occasione*."

§ A pancratiast and wrestler. See Pausan. v. 21. The saying, ἐγὼ ποιήσω πάντα κατὰ Νικόστρατον, which occurs twice in Suidas, in ἐγὼ and Νικόστρατος, is said to refer to a player of that name.

tests he was crowned on the same day. 15. How much more must such training, indeed, be pursued by the teacher of the future orator! For it is not enough that he should speak concisely, or artfully, or vehemently, any more than for a singing master to excel in acute, or middle, or grave tones only, or even in particular subdivisions of them: since eloquence is, like a harp, not perfect, unless, with all its strings stretched, it be in unison from the highest to the lowest note.

CHAPTER IX.

Pupils should regard their tutors as intellectual parents.

1. HAVING spoken thus fully concerning the duties of teachers, I give pupils, for the present, only this one admonition, that they are to love their tutors not less than their studies, and to regard them as parents, not indeed of their bodies, but of their minds. 2. Such affection contributes greatly to improvement, for pupils, under its influence, will not only listen with pleasure, but will believe what is taught them, and will desire to resemble their instructors. They will come together, in assembling for school, with pleasure and cheerfulness; they will not be angry when corrected, and will be delighted when praised; and they will strive, by their devotion to study, to become as dear as possible to the master. 3. For as it is the duty of preceptors to teach, so it is that of pupils to show themselves teachable; neither of these duties, else, will be of avail without the other. And as the generation of man is effected by both parents, and as you will in vain scatter seed, unless the furrowed ground, previously softened, cherish it, so neither can eloquence come to its growth unless by mutual agreement between him who communicates and him who receives

CHAPTER X.

Remarks on declamations, § 1, 2. Injudiciousness in the choice of subjects has been an obstruction to improvement in eloquence, 3—5. On what sort of subjects pupils may be permitted to declaim, 6—8. What alterations should be made in the common practice, 9—15.

1. When the pupil has been well instructed, and sufficiently exercised, in these preliminary studies, which are not in themselves inconsiderable, but members and portions, as it were, of higher branches of learning, the time will have nearly arrived for entering on deliberative and judicial subjects. But before I proceed to speak of those matters, I must say a few words on the art of declamation, which, though the most recently invented* of all exercises, is indeed by far the most useful. 2. For it comprehends within itself all those exercises of which I have been treating, and presents us with a very close resemblance to reality; and it has been so much adopted, accordingly, that it is thought by many sufficient of itself to form oratory, since no excellence in continued speaking can be specified, which is not found in this prelude† to speaking. 3. The practice however has so degenerated through the fault of the teachers, that the license and ignorance of declaimers have been among the chief causes that have corrupted eloquence. But of that which is good by nature we may surely make a good use. 4. Let therefore the subjects themselves, which shall be imagined, be as like as possible to truth; and let declamations to the utmost extent that is practicable, imitate those pleadings for which they were introduced as a preparation. 5. For as to *magicians*,‡ and the *pestilence*, and *oracles*,§ and *step-*

* See i. 4, 41, 42.

† *Meditatione.*] That is μελέτη, or *exercise.* Capperonier.

‡ Such a subject as that of the tenth of the declamations ascribed to Quintilian, entitled *Sepulchrum Incantatum.*

§ Pestilentiam, *et* responsa.] These two words appear to refer to the same subject, which is that of the 326th declamation of those called Quintilian's: A people suffering from pestilence sent a deputy to consult an oracle about a remedy; the answer given him was that he must sacrifice his own son. On his return he communicated the oracle to his son, but concealed it from the public authorities, telling them that they had to perform certain sacred rites. When the rites were finished, the pestilence did not abate; and the son then put himself to

mothers more cruel than those of tragedy, and other subjects more imaginary than these, we shall in vain seek them among *sponsions* and *interdicts*.* What, then, it may be said, shall we never suffer students to handle such topics as are above belief, and (to say the truth) poetical, so that they may expatiate and exult in their subject, and swell forth as it were into full body?† 6. It would indeed be best not to suffer them; but at least let not the subjects, if grand and turgid, appear also, to him who regards them with severe judgment, foolish and ridiculous; so that, if we must grant the use of such topics, let the declaimer swell himself occasionally to the full, provided he understands that, as four-footed animals, when they have been blown with green fodder, are cured by losing blood, and thus return to food suited to maintain their strength, so must his turgidity‡ be diminished, and whatever corrupt humours he has contracted be discharged, if he wishes to be healthy and strong; for otherwise his empty swelling will be hampered§ at the first attempt at any real pleading.

7. Those, assuredly, who think that the whole exercise of declaiming is altogether different from forensic pleading, do not see even the reason for which that exercise was instituted. 8. For, if it is no preparation for the forum, it is merely like theatrical ostentation, or insane raving. To what purpose is it to instruct a judge, who has no existence? To state a case that all know to be fictitious? To bring proofs of a point on which no man will pronounce sentence? This indeed is nothing more than trifling; but how ridiculous is it to excite our feelings, and to work upon an audience with anger and sorrow, unless we are preparing ourselves by imitations of battle for serious contests and a regular field? 9. Will there then be

death. After the pestilence had subsided, the father was accused of treason to the state. See also Declamat. 384, and the 19th and 43rd of those ascribed to Calphurnius Flaccus.

* Law terms; *sponsio* was when a litigant engaged to pay a certain sum of money if he lost the cause; an *interdict* was when the prætor ordered or forbade anything to be done, chiefly in regard to property. *Turnebus.*

† *Quasi in corpus cant.*] Compare c. 4, sect. 5.

‡ *Adipes*, fat.

§ *Deprehendetur.*] Not equivalent to *invenietur* or *agnoscetur*, but to *in arctum deferetur et æstuabit, se expedire nesciens.* See i. 1, 39. *Spalding.*

no difference, it may be asked, between the mode of speaking at the bar, and mere exercise in declamation? I answer, that if we speak for the sake of improvement, there will be no difference. I wish, too, that it were made a part of the exercise to use names; * that causes more complicated, and requiring longer pleadings, were invented; that we were less afraid of words in daily use; and that we were in the habit of mingling jests with our declamation; all which points, however we may have been practised in the schools in other respects, find us novices at the bar.

10. But even if a declamation be composed merely for display, we ought surely to exert our voice in some degree to please the audience. For even in those oratorical compositions, which are doubtless based in some degree upon truth, but are adapted to please the multitude, (such as are the panegyrics which we read, and all that *epideictic* kind of eloquence,) it is allowable to use great elegance, and not only to acknowledge the efforts of art, (which ought generally to be concealed in forensic pleadings,) but to display it to those who are called together for the purpose of witnessing it. 12. Declamation therefore, as it is an imitation of real pleadings and deliberations, ought closely to resemble reality, but, as it carries with it something of ostentation, to clothe itself in a certain elegance. 13. Such is the practice of actors, who do not pronounce exactly as we speak in common conversation, for such pronunciation would be devoid of art; nor do they depart far from nature, as by such a fault imitation would be destroyed; but they exalt the simplicity of familiar discourse with a certain scenic grace.

14. However some inconveniences will attend us from the nature of the subjects which we have imagined, especially as many particulars in them are left uncertain, which we settle as suits our purpose, as *age*, *fortune*, *children*, *parents*, *strength*, *laws*, and *manners of cities;* and other things of a similar kind. 15. Sometimes, too, we draw arguments from the very faults of the imaginary causes. But on each of these points

* Which were not introduced in declamations; for *pater, tyrannicida, abdicatus, raptor* were used as general terms, rendering the whole performance less animated, and less like reality. In *suasoriæ orationes* persons were specified, but to them Quintilian seems to make no reference in these remarks. *Spalding.*

we shall speak in its proper place. For though the whole object of the work intended by us has regard to the formation of an orator, yet, lest students may think anything wanting, we shall not omit, in passing, whatever may occur that fairly relates to the teaching of the schools.

CHAPTER XI.

Some think instruction in oratory unnecessary, § 1, 2. Boasts and practices of the ignorant, 3—5. Some study only parts of their speeches; want of connexion in their matter, 6, 7.

1. FROM this point, then, I am to enter upon that portion of the art with which those who have omitted the preceding portions usually commence. I see, however, that some will oppose me at the very threshold; men who think that eloquence has no need of rules of this kind, and who, satisfied with their own natural ability, and the common methods of teaching and exercise in the schools, even ridicule my diligence; following the example of certain professors of great reputation. It was one of those characters, I believe, who, being asked what a *figure* and what a *thought* was, answered that "he did not know, but that, if it had any relation to his subject, it would be found in his declamation." 2. Another of them replied to a person who asked him "whether he was a follower of Theodorus or Apollodorus," "I am a prize fighter."* Nor could he indeed have escaped an avowal of his ignorance with greater wit. But such men, as they have

* *Percontanti* Theodoreus an Apollodoreus esset, Ego, *inquit*, parmularius sum.] Theodorus and Apollodorus were well-known rhetoricians, often mentioned by Quintilian, and leaders of parties. That *parmularius* signifies one who favoured the gladiators in the theatre and arena, called *Thraces* from their armour, has been shown by the commentators on Suet. Domit. c. 10. . . . The man to whom Quintilian alludes intimates that he knew whom to favour in the arena and the circus, but that for parties among rhetoricians he had no care. *Gesner.* "It is almost the same as if a person, upon being asked whether he were a Nominalist or a Realist, were to reply, 'I am a Carthusian, that is, I do not care for or do not know the names Nominalist and Realist." Scheller's Lexicon. s.v. *parmularius*

attained eminent repute through the goodness of their natural powers, and have uttered many things even worthy of remembrance, have had very many imitators that resemble them in negligence, but very few that approach them in ability. 3. They make it their boast that they speak from impulse, and merely exert their natural powers; and say that there is no need of proofs or arrangement in fictitious subjects, but only of grand thoughts, to hear which the auditory will be crowded, and of which the best are the offspring of venturesomeness. 4. In meditation, also, as they use no method, they either wait, often for some days,* looking at the ceiling for some great thought that may spontaneously present itself, or, exciting themselves with inarticulate sounds, as with a trumpet, they adapt the wildest gestures of body, not to the utterance, but to the excogitation of words.

5. Some, before they have conceived any thoughts, fix upon certain heads, under which something eloquent is to be introduced; but, after modulating their words to themselves, aloud and for a long time, they desert their proposed arrangement, from despairing of the possibility of forming any connexion, and then turn to one train of ideas, and again to another, all equally common and hackneyed. 6. Those however who seem to have most method, do not bestow their efforts on fictitious causes, but on common topics, in which they do not direct their view to any certain object, but throw out detached thoughts as they occur to them. 7. Hence it happens that their speech, being unconnected and made up of different pieces, cannot hang together, but is like the note-books of boys, in which they enter promiscuously whatever has been commended in the declamations of others. Yet they sometimes strike out fine sentiments and good thoughts (for so indeed they are accustomed to boast); but barbarians and slaves do the same; and, if this be sufficient, there is no art at all in eloquence.

* *Pluribus sæpe diebus.*] Gallæus and Gesner thought that these words, as absurdly hyperbolical, should be struck out of the text. Comp. xi. 3, 160; x. 4, 15.

CHAPTER XII.

Why the ignorant often seem to speak with more force than the learned, § 1—3. They attack more boldly, and are less afraid of failure, 4, 5. But they cannot choose judiciously, or prove with effect, 6. Their thoughts sometimes striking, 7. Apparent disadvantages of learned polish, 8. Unlearned speakers often vigorous in delivery, 9, 10. Occasionally too much admired by teachers of oratory, 11, 12.

1. I MUST not forbear to acknowledge, however, that people in general adopt the notion that the unlearned appear to speak with more force than the learned. But this opinion has its origin chiefly in the mistake of those who judge erroneously, and who think that what has no art has the more energy; just as if they should conceive it a greater proof of strength to break through a door than to open it, to rupture a knot than to untie it, to drag an animal than to lead it. 2. By such persons a gladiator, who rushes to battle without any knowledge of arms, and a wrestler, who struggles with the whole force of his body to effect that which he has once attempted, is called so much the braver; though the latter is often laid prostrate by his own strength, and the other, however violent his assault, is withstood by a gentle turn of his adversary's wrist.*

3. But there are some things concerning this point that very naturally deceive the unskilful; for *division*, though it is of great consequence in pleadings, diminishes the appearance of strength; what is rough is imagined more bulky than what is polished; and objects when scattered are thought more numerous than when they are ranged in order.

4. There is also a certain affinity between particular excellences and faults, in consequence of which a *railer* passes for a *free speaker*, a *rash* for a *bold* one, a *prolix* for a *copious* one. But an ignorant pleader rails too openly and too frequently, to the peril of the party whose cause he has undertaken, and often to his own. 5. Yet this practice attracts the notice of people to him, because they readily listen to what they would not themselves utter.

Such a speaker, too, is far from avoiding that venturesome-

* *Illum, vehementis impetûs, excipit adversarii mollis articulus.*] "The flexible joint of the adversary withstands him [who is] of violent assault;" *vehementis impetûs* being a genitive of quality.

ness which lies in mere expression,* and makes desperate efforts; whence it may happen that he who is always seeking something extravagant, may sometimes find something great; but it happens only seldom, and does not compensate for undoubted faults.

6. It is on this account that unlearned speakers seem sometimes to have greater copiousness of language, because they pour forth every thing; while the learned use selection and moderation. Besides, unlearned pleaders seldom adhere to the object of proving what they have asserted; by this means they avoid what appears to judges of bad taste the dryness of questions and arguments, and seek nothing else but matter in which they may please the ears of the court with senseless gratifications.

7. Their *fine sentiments* themselves, too, at which alone they aim, are more striking when all around them is poor and mean; as lights are most brilliant, not amidst shades as Cicero says,† but amidst utter darkness. Let such speakers therefore be called as ingenious as the world pleases, provided it be granted that a man of real eloquence would receive the praise given to them as an insult.

8. Still it must be allowed that learning does take away something, as the file takes something from rough metal, the whetstone from blunt instruments, and age from wine; but it takes away what is faulty; and that which learning has polished is less only because it is better.

9. But such pleaders try by their delivery to gain the reputation of speaking with energy; for they bawl on every occasion and bellow out every thing *with uplifted hand*, as

* *Illud quoque alterum, quod est in elocutione ipsâ, periculum, minùs vitat.*] Spalding says that by *alterum periculum* is meant the *other sense* of the word danger, that is, the figurative sense, it being used here metaphorically, distinct from "*verum periculum*," real danger. He should rather have said that we should understand Quintilian as referring to one kind of *periculum* which lies in the speaker's matter or thoughts, and which he incurs *maledicendo*, sect. 4; and another kind which lies merely in his style of speaking, *in elocutione ipsâ*, in which he is always aiming at something grand and striking. I translate the first by "peril," and the second by "venturesomeness," as they cannot be both rendered by the same word in English Compare c. xi. sect. 3.

† De Orat. iii. 26. The reference was first discovered by Almeloveen. Gesner justly observes that Quintilian alludes to the pas- in jest.

they call it, raging like madmen with incessant action, panting and swaggering, and with every kind of gesture and movement of the head. 10. To clap the hands together, to stamp the foot on the ground, to strike the thigh, the breast, and the forehead with the hand, makes a wonderful impression on an audience of the lower order,* while the polished speaker, as he knows how to temper, to vary, and to arrange the several parts of his speech, so in delivery he knows how to adapt his action to every variety of complexion in what he utters; and, if any rule appears to him deserving of constant attention, it would be that he should prefer always to be and to seem modest. But the other sort of speakers call that force which ought rather to be called violence.

11. But we may at times see not only pleaders, but, what is far more disgraceful, teachers, who, after having had some short practice in speaking, abandon all method and indulge in every kind of irregularity as inclination prompts them, and call those who have paid more regard to learning than themselves, foolish, lifeless, timid, weak, and whatever other epithet of reproach occurs to them. 12. Let me then congratulate them as having become eloquent without labour, without method, without study; but let me, as I have long withdrawn from the duties of teaching and of speaking in the forum, because I thought it most honourable to terminate my career while my services were still desired, console my leisure in meditating and composing precepts which I trust will be of use to young men of ability, and which, I am sure, are a pleasure to myself.

CHAPTER XIII.

Quintilian does not give rules from which there is no departure; pleaders must act according to the requisitions of their subjects, 1—7. What an orator has chiefly to keep in view, and how far rules should be observed, 8—17.

1. But let no man require from me such a system of precepts as is laid down by most authors of *books of rules*, a

* *Mirè ad pullatum circulum facit.*] The colour or dirt of the *toga*, and still more of the *tunica*, which many of the poor wore without anything over it, characterizes a multitude of the lower and uneducated class of people. So Plin. Ep. vii. 17: *Illos quoque sordidos et pullatos reveremur.* See Quint. vi. 4, 6. *Spalding.*

system in which I should have to make certain laws, fixed by immutable necessity, for all students of eloquence, commencing with the *proœmium*, and what must be the character of it, saying that the *statement of facts* must come next, and what rule must be observed in stating them; that after this must come the *proposition*, or as some have preferred to call it, the *excursion*;* and then that there must be a *a certain order of questions;* adding also other precepts, which some speakers observe as if it were unlawful to do otherwise, and as if they were acting under orders; 2. for rhetoric would be a very easy and small matter, if it could be included in one short body of rules, but rules must generally be altered to suit the nature of each individual case, the time, the occasion, and necessity itself; consequently, one great quality in an orator is discretion, because he must turn his thoughts in various directions, according to the different bearings of his subject. 3. What if you should direct a general, that, whenever he draws up his troops for battle, he must range his front in line, extend his wings to the right and left, and station his cavalry to defend his flanks? Such a method will perhaps be the best, as often as it is practicable; but it will be subject to alteration from the nature of the ground, if a hill come in the way, if a river interpose, if obstruction be caused by declivities, woods, or any other obstacles: 4. the character of the enemy, too, may make a change necessary, or the nature of the contest in which he has to engage; and he will have to fight, sometimes with his troops in extended line, sometimes in the form of wedges, and to employ, sometimes his auxiliaries, and sometimes his own legions; and sometimes it will be of advantage to turn his back in pretended flight. 5. In like manner, whether an exordium be necessary or superfluous, whether it should be short or long, whether it should be wholly addressed to the judge, or, by the aid of some figure of speech, directed occasionally to others, whether the statement of facts should be concise or copious, continuous or broken, in the order of events or in any other, the nature of the causes themselves must show. 6. The case is the same with regard to the order of examination, since, in the same cause, one question may often be of advantage to one side, and another question to the other, to be asked first; for the precepts of oratory are not

* See b. iv. c. 3, 4.

established by laws or public decrees, but whatever is contained in them was discovered by expediency. 7. Yet I shall not deny that it is in general of service to attend to rules, or I should not write any; but if expediency shall suggest anything at variance with them, we shall have to follow it deserting the authority of teachers.

8. For my part I shall, above all things,

Direct, enjoin, and o'er and o'er repeat,*

that an orator, in all his pleadings, should keep two things in view, *what is becoming*, and *what is expedient;* but it is frequently *expedient*, and sometimes *becoming*, to make some deviations from the regular and settled order, as, in statues and pictures, we see the dress, look, and attitude, varied. 8. In a statue, *exactly* upright, there is but very little gracefulness,† for the face will look straight forward, the arms hang down, the feet will be joined, and the whole figure, from top to toe, will be rigidity itself; but a gentle bend, or, to use the expression, motion of the body, gives a certain animation to figures. Accordingly, the hands are not always placed in the same position, and a thousand varieties are given to the countenance. 10. Some figures are in a running or rushing posture, some are seated or reclining, some are uncovered, and others veiled, some partake of both conditions. What is more distorted and elaborate than the Discobolus of Myron?‡ Yet if any one should find fault with that figure for not being upright, would he not prove himself void of all understanding of the art, in which the very novelty and difficulty of the execution is what is most deserving of praise? 11. Such graces and charms rhetorical figures afford, both such as are in the thoughts and such as lie in words, for they depart in some degree from the right line, and exhibit the merit of deviation from common practice 12. The whole face is generally represented in a painting, yet Apelles painted the figure of Antigonus with only one side of

* A verse from Virgil, Æn. iii. 436, *Prædicam, et repetens iterumque iterumque monebo, prædicam* being purposely changed by Quintilian into *præcipiam.*

† Quintilian had some notion of the waving line of beauty, of which Hogarth has so ably treated.

‡ See Plin. H. N. xxxiv. 19. Lucian Philopseud. vol. vii. p. 268, ed. Bip.

his face towards the spectator, that its disfigurement from the loss of an eye might be concealed. Are not some things, in like manner, to be concealed in speaking, whether, it may be, because they ought not to be told, or because they cannot be expressed as they deserve? 13 It was in this way that Timanthes, a painter, I believe, of Cythnus,* acted, in the picture by which he carried off the prize from Colotes, of Teium; for when, at the sacrifice of Iphigenia, he had represented Calchas looking sorrowful, Ulysses more sorrowful, and had given to Menelaus the utmost grief that his art could depict, not knowing, as his power of representing feeling was exhausted, how he could fitly paint the countenance of the father, he threw a veil over his head, and left his grief to be estimated by the spectator from his own heart. 14. To this device is not the remark of Sallust somewhat similar, *For I think it better to say nothing concerning Carthage, than to say but little?* For these reasons it has always been customary with me, to bind myself as little as possible to rules which the Greeks call καθολικά, and which we, translating the word as well as we can, term *universalia* or *perpetualia*, "general" or "constant;" for rules are rarely found of such a nature, that they may not be shaken in some part, or wholly overthrown.

But of rules I shall speak more fully, and of each in its own place. 15. In the mean time, I would not have young men think themselves sufficiently accomplished, if they have learned by art some one of those little books on rhetoric, which are commonly handed about, and fancy that they are thus safe under the decrees of theory. The art of speaking depends on great labour, constant study, varied exercise, repeated

* *Timanthes, opinor, Cythnius.*] See Plin. H. N. xxxv. 36; Cic. Orat. c. 22; Val. Max. viii. 11, ext. But it has been justly observed that the painter took the hint from Euripides, Iphig. Aul. 1550. *Spalding.* What Euripides says is, that "Agamemnon, when he saw Iphigenia going to be sacrificed, uttered a groan, and, turning away his head, shed tears, veiling his face with his robe." Spalding remarks that the doubt implied in *opinor* refers to the country of Timanthes, Quintilian not being certain whether he was a Cythnian or not; though why Quintilian should have been so anxious to avoid error about the painter's country, when he was merely making a passing observation on his picture, it is not easy to say. For further particulars about Timanthes and his painting, the reader may consult Smith's Dict. of Biog. and Mythol.

trials, the deepest sagacity, and the readiest judgment. 16 But it is assisted by rules, provided that they point out a fair road, and not one single wheel-rut, from which he who thinks it unlawful to decline, must be contented with the slow progress of those who walk on ropes. Accordingly, we often quit the main road, (which has been formed perhaps by the labour of an army,) being attracted by a shorter path; or if bridges, broken down by torrents, have intersected the direct way, we are compelled to go round about; and if the gate be stopped up by flames, we shall have to force a way through the wall. 17. The work of eloquence is extensive and of infinite variety, presenting something new almost daily; nor will all that is possible ever have been said of it. But the precepts which have been transmitted to us I will endeavour to set forth, considering, at the same time, which of them are the most valuable, whether anything in them seems likely to be changed for the better, and whether any additions may be made to them, or anything taken from them.

CHAPTER XIV.

Of the term rhetoric or oratory, § 1—4. Heads under which Quintilian considers the art of oratory, 5.

1. Some who have translated ῥητορική from Greek into Latin, have called it *ars oratoria* and *oratrix*. I would not deprive those writers of their due praise, for endeavouring to add to the copiousness of the Latin language, but all Greek words do not obey our will, in attempting to render them from the Greek, as all our words, in like manner, do not obey that of the Greeks, when they try to express something of ours in their own tongue. 2. This translation is not less harsh than the *essentia* and *entia* of Flavius,* for the Greek οὐσία: nor is

* It is probable that he is the same person whom writers in general call Papirius Fabianus, a contemporary of Seneca, a philosopher *well acquainted with the nature of things*, as he is called by Plin. H. N. xxxvi. 24. Both the Senecas, father and son, say a great deal of him, the one in the Præf. Controv. ii. p. 132—134; the other in the Epist. ad Lucil. 100. *Spalding.* But from Sen. Ep. 58, it appears, according to the emendation of Muretus, now generally adopted, that Cicero had previously used the word. Compare Quint. viii. 3, 53.

it indeed exact, for *oratoria* will be taken in the same sense as *elocutoria*, *oratrix* as *elocutrix*, but the word *rhetorice*, of which we are speaking, is the same sort of word as *eloquentia*, and it is doubtless used in two senses by the Greeks. 3. In one acceptation it is an adjective, *ars rhetorica*, as *navis piratica:* in the other a substantive, like *philosophia* or *amicitia*. We wish it now to have the signification of a substantive, just as γραμματικὴ is rendered by the substantive *literatura*, not by *literatrix*, which would be similar to *oratrix*, nor by *literatoria*, which would be similar to *oratoria;* but for the word *rhetorice*, no equivalent Latin word has been found. 4. Let us not, however, dispute about the use of it, especially as we must adopt many other Greek words; for if I may use the terms *physicus*, *musicus*, *geometres*, I shall offer no unseemly violence to them by attempting to turn them into Latin; and since Cicero himself uses a Greek title for the books which he first wrote upon the art, we certainly need be under no apprehension of appearing to have rashly trusted the greatest of orators as to the name of his own art.

Rhetoric, then, (for we shall henceforth use this term without dread of sarcastic objections,) will be best divided, in my opinion, in such a manner, that we may speak first of the *art*, next of the *artist*, and then of the *work*. The *art* will be that which ought to be attained by study, and is the *knowledge how to speak well*. The *artificer* is he who has thoroughly acquired the art, that is, the orator, whose business is *to speak well*. The *work* is what is achieved by the artificer, that is, *good speaking*. All these are to be considered under special heads; but of the particulars that are to follow, I shall speak in their several places; at present I shall proceed to consider what is to be said on the first general head.

CHAPTER XV.

What rhetoric is, § 1, 2. To call it *the power of persuading* is to give an insufficient definition of it, 3—9. To call it *the power of persuading by speech* is not sufficient, 10, 11. Other definitions, 12—23. That of Gorgias in Plato; that of Plato or Socrates in the Phædrus, 24—31. That of Cornelius Celsus, 32. Other definitions more approved by Quintilian, 33—37. Quintilian's own definition, 38.

1. First of all, then, we have to consider what rhetoric is. It is, indeed, defined in various ways; but its definition gives rise chiefly to two considerations, for the dispute is, in general, either concerning the *quality of the thing itself*, or concerning the comprehension of the terms in which it is defined. The first and chief difference of opinion on the subject is, that some think it possible even for bad men to have the name of orators; while others (to whose opinion I attach myself) maintain that the name, and the art of which we are speaking, can be conceded only to good men.*

2. Of those who separate the talent of speaking from the greater and more desirable praise of a good life, some have called rhetoric merely a *power*, some a *science*, but not a virtue,† some a *habit*, some an art, but having nothing in common with science and virtue; some even an abuse of art, that is, a *κακοτεχνία*.‡ 3. All these have generally supposed, that the business of oratory lies either in *persuading*, or in *speaking in a manner adapted to persuade*, for such art may be attained by one who is far from being a good man. The most common definition therefore is, that *oratory is the power of persuading*. What I call a *power*, some call a *faculty*, and others a *talent*, but that this discrepancy may be attended with no ambiguity,

* This was the opinion also of Cato the Censor, given in his book *De Oratore* addressed to his son, as appears from Seneca the father, Præf. ad Controv. l. i., a remarkable passage, and worthy of attention from the studious. *Orator est, Marce fili, vir bonus dicendi peritus.* Antonius, in Cic. De Orat. ii. 20, distinguishes the orator from the good man, as does also Cicero himself, Invent. i. 3, 4. See Quintilian xii. 1, 1; and Procem. tot. op. sect. 9. *Spalding.*

† See c. 20.

‡ We call that art a *κακοτεχνία* which has not a good, but a bad end, as the magic art; and some abuse oratory to the hurt of their fellow creatures. *Turnebus.*

I mean by *power*, δύναμις. 4. This opinion had its origin from Isocrates, if the treatise on the art, which is in circulation under his name, is really his.* That rhetorician, though he had none of the feelings of those who defame the business of the orator, gives too rash a definition of the art when he says, "That rhetoric is the *worker of persuasion*, πειθοῦς δημιουργός" for I shall not allow myself to use the peculiar term † that Ennius applies to Marcus Cethegus, SUADÆ *medulla*. 5. In Plato too, Gorgias, in the Dialogue inscribed with his name, says almost the same thing; but Plato wishes it to be received as the opinion of Gorgias, not as his own. Cicero, in several passages ‡ of his writings, has said, that the duty of an orator is *to speak in a way adapted to persuade*. 6. In his books on Rhetoric also, but with which, doubtless, he was not satisfied. § he makes the end of eloquence to be *persuasion*.

But money, likewise, has the power of persuasion, and interest, and the authority and dignity of a speaker, and even his very look, unaccompanied by language, when ‖ either the remembrance of the services of any individual, or a pitiable appearance, or beauty of person, draws forth an opinion. 7. Thus when Antonius, in his defence of Manius Aquilius, exhibited on his breast, by tearing his client's robe, the scars of the wounds which he had received for his country, he did not trust to the power of his eloquence, but applied force, as it were, to the eyes of the Roman people, who, it was thought, were chiefly induced by the sight to

* The treatise of Isocrates Cicero (de Invent. ii. 2) intimates that he had not seen. There is a learned discussion of Manutius concerning it in a note on Epist. ad Div. i. 9. He conjectures that there may have been a treatise of Isocrates the younger, of Apollonia, a disciple of the greater Isocrates, mentioned by Harpocration (in ἐπακτός) and Suidas. See Ruhnk. Hist. Crit. Oratt. Græcc. prefixed to Rutilius Lupus, p. 84, *seqq.* Spalding.

† *Declinatione.*] That is, the peculiar form of derivative from the primitive *suadeo*. See viii. 3, 32; and Varro L. L. lib. v. p. 61, ed. Bip. *Capperonier.*

‡ De Orat. i. 31; Quæst. Acad. i. 8; De Invent. i. 5, *init.*

§ He shows his dissatisfaction with his *Rhetorica*, or books *de Inventione*, "qui sibi exciderint," Orat. i. 2, *init.* See Quint. iii. 1, 20; iii. 6, 58, 63. *Spalding.*

‖ Spalding's text has *quo*, but I have adopted *quum*, which he supposes, in his note, to be the true reading, referring to Drakenborch ad Liv. xxiv. 34, where it is shown that *quo* and *quum*, or *quom*, are often confounded.

acquit the accused. 8. That Servius Galba * escaped merely through the pity which he excited, when he not only produced his own little children before the assembly, but carried round in his hands the son of Sulpicius Gallus, is testified, not only by the records of others, but by the speech of Cato. 9. Phryne too, people think, was freed from peril, not by the pleading of Hyperides, though it was admirable, but by the exposure of her figure, which, otherwise most striking, he had uncovered by opening her robe. If, then, all such things *persuade*, the definition of which we have spoken is not satisfactory.

10. Those, accordingly, have appeared to themselves more exact, who, though they have the same general opinion as to rhetoric, have pronounced it to be the *power of persuading by speaking*. This definition Gorgias gives, in the Dialogue which we have just mentioned, being forced to do so, as it were, by Socrates. Theodectes, if the treatise on rhetoric, which is inscribed with his name, is his, (or it may rather, perhaps, as has been supposed, be the work of Aristotle,) does not dissent from Gorgias, for it is asserted in that book, that the object of oratory is *to lead men by speaking to that which the speaker wishes*. 11. But not even this definition is sufficiently comprehensive; for not only the orator, but others, as harlots, flatterers, and seducers,† persuade, or *lead to that which they wish*, by speaking. But the orator, on the contrary, does not always persuade; so that sometimes this is not his peculiar object; sometimes it is an object common to him with others, who are very different from orators. 12. Yet Apollodorus varies but little from this definition, as he says, that the first and supreme object of judicial pleading is *to persuade the judge, and to lead him to whatever opinion the speaker may wish*, for he thus subjects the orator to the power of fortune, so that, if he does not succeed in persuading, he cannot retain the name of an orator. 13. Some, on the other hand, detach themselves from all considerations as to the event, as Aristotle,

* When he was prætor in Spain he had put to death a body of Lusitanians after pledging the public faith that their lives should be spared; an act for which he was accused before the people by the tribune Libo, who was supported by Cato. *Turnebus.* See Cic. de Orat. i. 53.

† *Corruptores.*] Qui mares venantur. *Spalding.* Cic. Verr. iii. 2 Catil. ii. 4. Not *bribers*, for they seduce with money, not with words.

who says, that *oratory is the power of finding out whatever can persuade in speaking.** But this definition has not only the fault of which we have just spoken, but the additional one of comprehending nothing but invention, which, without elocution, cannot constitute oratory. 14. To Hermagoras, who says, that the object of oratory is *to speak persuasively*, and to others, who express themselves to the same purpose, though not in the same words, but tell us that the object of oratory is *to say all that ought to be said in order to persuade*, a sufficient answer was given when we showed that *to persuade* is not the business of the orator only.

15. Various other opinions have been added to these, for some have thought that oratory may be employed about *all subjects*, others only about *political affairs*, but which of these notions is nearer to truth, I shall inquire in that part of my work which will be devoted to the question. 16. Aristotle seems to have put everything in the power of oratory when he says, that it is *the power of saying*† *on every subject whatever can be found to persuade:* and such is the case with Patrocles,‡ who, indeed, does not add *on every subject*, but, as he makes no exception, shows that his idea is the same, for he calls oratory *the power of finding whatever is persuasive in speaking*, both which definitions embrace invention alone. Theodorus,§ in order to avoid this defect, decides oratory to be *the power of discovering and expressing, with elegance, whatever is credible on any subject whatever.* 17. But, while one who is not an orator may find out what is credible as well as what is persuasive, he, by adding *on any subject whatever*, grants more than the preceding makers of definitions, and allows the title of a most honourable art to those who may

* Τοῦ θεωρῆσαι τὸ ἐνδεχόμενον πιθανον. Rhet. i. 2, 1.

† *Dicendi.*] Though this is the reading of all copies, Spalding justly observes that it cannot be right, as it is at variance with what is said in sect. 13, and that we ought to read *inveniendi* or something similar.

‡ He is mentioned again, iii. 6, 44. Nothing more is known of him than is to be learned from these two passages.

§ I do not suppose him to be the same that is mentioned in sect. 21, or Quintilian would scarcely have added "of Gadara" when he mentioned him the second time, unless he had intended to distinguish the one from the other. We must suppose, therefore, that it is Theodorus of Byzantium who is meant; a rhetorician mentioned by Plato Phædr. p. 266 E, as well as by Quint. iii. 1, 11; and see Cic. Brut. c. 12; Orat. c. 12. *Spalding.*

persuade even to crime. 18. Gorgias, in Plato, calls himself a master of persuasion in courts of justice and other assemblies, and says that he treats both of what is just and what is unjust; and Socrates allows him the art of *persuading*, but not of *teaching*.

19. Those who have not granted all subjects to the orator, have made distinctions in their definitions, as they were necessitated, with more anxiety and verbosity. One of these is Ariston, a disciple of Critolaus, the Peripatetic, whose definition of oratory is, that it is *the science of discovering and expressing what ought to be said on political affairs, in language adapted to persuade the people.* 20 He considers oratory a *science*, because he is a Peripatetic, not a *virtue*, like the Stoics,* but, in adding *adapted to persuade the people*, he throws dishonour on the art of oratory, as if he thought it unsuited to persuade the learned. But of all who think that the orator is to discourse only on political questions, it may be said, once for all, that many duties of the orator are set aside by them; for instance, all *laudatory* speaking, which is the third part of oratory.† 21. Theodorus, of Gadara, (to proceed with those who have thought oratory an *art*, not a *virtue*,) defines more cautiously, for he says, (let me borrow the words of those who have translated his phraseology from the Greek,) that oratory is *an art that discovers, and judges, and enunciates with suitable eloquence, according to the measure of that which may be found adapted to persuading, in any subject connected with political affairs.* 22. Cornelius Celsus, in like manner, says that the object of oratory is *to speak persuasively on doubtful and political matters.* To these defi-

* Cicero, de Orat. iii. 18, says that *the Stoics alone, of all the philosophers, have called eloquence virtue and wisdom;* see also Acad. Quæst. i. 2. The Stoics necessarily held this opinion, as they also gave *dialectics* and *physics* the name of *virtues*, Cic. de Fin. iii. 21; and of dialectics, taken in its widest sense, oratory or rhetoric may be considered as a part. The Stoics, indeed, make the word ἐπιστήμη the basis of all their definitions of virtues; see Stob. Eclog. p. 167, ed. Antv.; and virtue itself is defined by Musonius Rufus, the master of Epictetus, as *knowledge not merely theoretical, but practical:* Stob. Serm. p. 204, ed. Tigur. If therefore the definition of eloquence in the text had proceeded from a Stoic, and not a Peripatetic, he would have acknowledged it to be a virtue by the very admission that it was knowledge. See c. 20 of this book. *Spalding.*

† The *epideictic*, the other two parts being the *deliberative* and the *judicial*.

nitions there are some, not very dissimilar, given by others, such as this: *oratory is the power of judging and discoursing on such civil questions as are submitted to it, with a certain persuasiveness, a certain action of the body, and a certain mode of delivering what it expresses.* 23. There are a thousand other definitions, but either similar, or composed of similar elements, which we shall notice when we come to treat upon the subjects of oratory.

Some have thought it neither a *power*, nor a *science*, nor an *art;* Critolaus calls it the *practice of speaking;* (for such is the meaning of the word τριβή:) Athenæus,* *the art of deceiving.*† 24. But most writers, satisfied with reading a few passages from Plato's Gorgias,‡ unskilfully extracted by their predecessors, (for they neither consult the whole of that dialogue, nor any of the other writings of Plato,) have fallen into a very grave error, supposing that that philosopher entertained such an opinion as to think that *oratory was not an art, but a certain skilfulness in flattering and pleasing;* 25. or, as he says in another place, the *simulation of one part of polity*, and *the fourth sort of flattery*, for he assigns two parts of polity to the body, *medicine*, and, as they interpret it, *exercise*, and two to the mind, *law* and *justice*, and then calls the *art of cooks* the flattery or simulation of *medicine*, and the *art of dealers in slaves* the simulation of the effects of *exercise*, as they produce a false complexion by paint and the appearance of strength by unsolid fat; the simulation of *legal science* he calls *sophistry*, and that of *justice rhetoric.* 26. All this is, indeed, expressed in that Dialogue, and uttered by Socrates, under whose person Plato seems to intimate what he thinks; but some of his dialogues were composed merely to refute those who argued on the other side, and are called ἐλεγκτικοί: others were written to teach, and are called δογματικοί. 27. But Socrates, or Plato, thought that sort of oratory, which was then practised, to be of a dogmatic character, for he speaks of it as being κατὰ τοῦτον τὸν τρόπον ὃν ὑμεῖς πολιτεύεσθε,§ "according to the manner in which you manage public affairs,"

* He is mentioned again, iii. 1, 16. Nothing more is known of him than is to be learned from these two passages of Quintilian.

† It is strange that among those who said that oratory was neither a *power*, nor a *science*, nor an art, Quintilian should rank one who called it the "*art* of deceiving." *Spalding.*

‡ Plato Gorg. sect. 43, *seqq.* p. 462, ed. Steph.

§ Sect. 120, p. 500 C.

and understands oratory of a sincere and honourable nature. The dispute with Gorgias is accordingly thus terminated: "It is therefore necessary that the orator be a just man, and that the just man should wish to do just things."* 28. When this has been said, Gorgias is silent, but Polus resumes the subject, who, from the ardour of youth, is somewhat inconsiderate, and in reply to whom the remarks on simulation and flattery are made. Callicles, who is even more vehement, speaks next, but is reduced to the conclusion, that "he who would be a true orator must be a just man, and must know what is just;"† and it is therefore evident, that oratory was not considered by Plato an evil, but that he thought true oratory could not be attained by any but a just and good man. 29. In the Phædrus he sets forth still more clearly, that the art cannot be fully acquired without a knowledge of justice, an opinion to which I also assent. Would Plato, if he had held any other sentiments, have written the Defence of Socrates, and the Eulogy of those who fell in defence of their country,‡ compositions which are certainly work for the orator? 30. But he has even inveighed against that class of men who used their abilities in speaking for bad ends. Socrates also thought the speech, which Lysias had written for him when accused, improper for him to use, though it was a general practice, at that time, to compose for parties appearing before the judges speeches which they themselves might deliver; and thus an elusion of the law,§ by which one man was not allowed to speak for another, was effected. 31. By Plato, also, those who separated oratory from justice, and preferred

* Sect. 35, p. 460 C.

† Sect. 136, p. 508 C.

‡ Plato wrote a funeral oration on some Athenians who had fallen in battle; a composition, says Cicero, which was so well received, that it was recited publicly on a certain day in every year. *Turnebus.*

§ Of this law I have found no mention in any other author, nor has any one of Quintilian's commentators paid due attention to this passage. That what he says is true, and that it was not customary at Athens for one man to speak for another, seems to be shown by the fact that in the works of the Greek orators the litigants always speak for themselves. The only exception was, when the litigant had not the privilege of speaking, as Callias, who was a *metœc*, and for whom Lysias spoke; (see Lys. Orat. v., and Wolf. Prol. in Lept. p. 69;) and persons under age, and women. *Spalding.* He adds a few more remarks, which the reader may consult.

what is probable to what is true, were thought no proper teachers of the art, for so he signifies, too, in his Phædrus. 32. Cornelius Celsus, moreover, may be thought to have been of the same opinion with those to whom I have just referred, for his words are, *the orator aims only at the semblance of truth;* and he adds, a little after, *not purity of conscience, but the victory of his client, is the reward of the pleader.* Were such assertions true, it would become only the worst of men to give such pernicious weapons to the most mischievous of characters, and to aid dishonesty with precepts; but let those who hold this opinion consider what ground they have for it.

33. Let me, for my part, as I have undertaken to form a *perfect orator*, whom I would have, above all, to be a *good man*, return to those who have better thoughts of the art. Some have pronounced oratory to be indentical with *civil polity;* Cicero calls it *a part of civil polity; and a knowledge of civil polity*, he thinks, is nothing less than wisdom itself. Some have made it a part of *philosophy*, among whom is Isocrates.* 34. With this character† of it, the definition that *oratory is the science of speaking well*, agrees excellently, for it embraces all the virtues of oratory at once, and includes also the character of the true orator, as he cannot speak well unless he be a good man. 35. To the same purpose is the definition of Chrysippus, derived from Cleanthes,‡ *the science of speaking properly.* There are more definitions in the same philosopher, but they relate rather to other§ questions. A definition framed in these terms, *to persuade to what is necessary*, would convey the same notion, except that it makes the art

* This we may suppose to have been said in the lost treatise mentioned in sect. 4. In the rest of his writings he is accustomed to use the word *philosophy* with more latitude than was usual; as in the Panegyric, ἡ περὶ τοὺς λόγους φιλοσοφία. *Spalding.*

† *Huic ejus substantiæ.*] That is, οὐσίᾳ, φύσει, *essentiæ, naturæ;* si nimirum hanc esse rhetorices *essentiam*, naturam, substantiam, statuerimus. *Capperonier.*

‡ "Cleanthes wrote a treatise on the art of rhetoric, and so did Chrysippus, but their writings were of such a nature that if a man wished his mouth closed for ever he has nothing to do but read them." Cic. de Fin. iv. 3. In their definition the expression doubtless was ὀρθῶς λέγειν, instead of εὖ λέγειν, which is found in Sext. Empir. p. 289, and Diog. Laërt. vii. 42. *Spalding.*

§ Not to this, whether eloquence is to be attributed to a good man only.

depend on the result. 36. Areus* defines oratory well, saying that it is *to speak according to the excellence of speech* Those also exclude bad men from oratory who consider it as the knowledge of civil duties, since they deem such knowledge virtue; but they confine it within too narrow bounds, and to political questions. Albutius,† no obscure professor or author, allows that it is the *art of speaking well*, but errs in giving it limitations, adding, *on political questions*, and *with probability*, of both which restrictions I have already disposed; those, too, are men of good intention, who consider it the business of oratory *to think and speak rightly*.

37. These are almost all the most celebrated definitions, and those about which there is the most controversy; for to discuss all would neither be much to the purpose, nor would be in my power; since a foolish desire, as I think, has prevailed among the writers of treatises on rhetoric, to define nothing in the same terms that another had already used; a vain-glorious practice which shall be far from me. 38. For I shall say, not what I shall invent, but what I shall approve; as, for instance, that *oratory is the art of speaking well;* since, when the best definition is found, he who seeks for another must seek for a worse.

This being admitted, it is evident at the same time what object, what highest and ultimate end, oratory has; that object or end which is called in Greek τέλος, and to which every art tends; for if oratory be *the art of speaking well*, its object and ultimate end must be *to speak well*.

CHAPTER XVI.

Oratory said by some to be a pernicious art, because it may be perverted to bad ends, § 1—4. We might say the same of other things that are allowed to be beneficial, 5, 6. Its excellences, 7—16. The abundant return that it makes for cultivation, 17—19.

1. Next comes the question *whether oratory is useful;* for

* He may possibly have been the Stoic philosopher of Alexandria, for whose sake Cæsar Octavianus spared that city; see Plut. in Anton. p. 953 A. His name is sometimes written Arius, the Greek being Ἄρειος. See Fabric Bibl. Gr. Harl. vol. iii., p. 540. *Spalding.*

† Caius Albucius Silus, of Novaria, a rhetorician of the age of

some are accustomed to declaim violently against it, and, what is most ungenerous, to make use of the power of oratory to lay accusations against oratory; 2. they say that *eloquence is that which saves the wicked from punishment; by the dishonesty of which the innocent are at times condemned; by which deliberations are influenced to the worse; by which not only popular seditions and tumults, but even inexpiable wars, are excited; and of which the efficacy is the greatest when it exerts itself for falsehood against truth.* 3. Even to Socrates, the comic writers make it a reproach that *he taught how to make the worse reason appear the better;* and Plato on his part says that Tisias and Gorgias* professed the same art. 4. To these they add examples from Greek and Roman history, and give a list of persons who, by exerting such eloquence as was mischievous, not only to individuals but to communities, have disturbed or overthrown the constitutions of whole states; asserting that eloquence on that account was banished from the state of Lacedæmon, and that even at Athens, where the orator was forbidden to move the passions, the powers of eloquence were in a manner curtailed.

5. Under such a mode of reasoning, neither will generals, nor magistrates, nor medicine, nor even wisdom itself, be of any utility; for Flaminius† was a general, and the Gracchi, Saturnini, and Glauciæ were magistrates; in the hands of physicians poisons have been found; and among those who abuse the name of philosophers have been occasionally detected the most horrible crimes. 6. We must reject food, for it has often given rise to ill health: we must never go under roofs, for they sometimes fall upon those who dwell beneath them; a sword must not be forged for a soldier, for a robber may use the same weapon. Who does not know that fire and water, without which life cannot exist, and, (that I may not confine myself to things of earth,) that the sun and moon, the chief of the celestial luminaries, sometimes produce hurtful effects?

Augustus. See Senec. Rhet. Contr. iii. præf. p. 197 Bip.; also Sueton. de Rhet. 6.

* "Tisias and Gorgias, by the power of words, make small things great, and great things small." Plato Phædr. p. 267, A.; see also p. 273, A, B, C. *Spalding.*

† The general who was defeated by Hannibal at the lake Thrasimenus.

7. Will it be denied, however, that the blind Appius, by the force of his eloquence, broke off a dishonourable treaty of peace about to be concluded with Pyrrhus? Was not the divine eloquence of Cicero, in opposition to the agrarian laws, even popular?* Did it not quell the daring of Catiline, and gain, in the toga, the honour of thanksgivings, the highest† that is given to generals victorious in the field? 8. Does not oratory often free the alarmed minds of soldiers from fear and persuade them, when they are going to face so many perils in battle, that glory is better than life? Nor indeed would the Lacedæmonians and Athenians influence me more than the people of Rome, among whom the highest respect has always been paid to orators. 9. Nor do I think that founders of cities would have induced their unsettled multitudes to form themselves into communities by any other means than by the influence of the art of speaking;‡ nor would legislators, without the utmost power of oratory, have prevailed on men to bind themselves to submit to the dominion of law. 10. Even the very rules for the conduct of life, beautiful as they are by nature, have yet greater power in forming the mind when the radiance of eloquence illumines the beauty of the precepts. Though the weapons of eloquence, therefore, have effect in both directions, it is not just that that should be accounted an evil which we may use to a good purpose.

11. But these points may perhaps be left to the consideration of those who think that the substance of eloquence lies in the power to persuade. But if eloquence be the *art of speaking well*, (the definition which I adopt,) so that a true *orator* must be, above all, *a good man*, it must assuredly be acknowledged that it is a useful art. 12. In truth, the sovereign deity, the parent of all things, the architect of the world, has distinguished man from other beings, such at least as were to be mortal, by nothing more than by the faculty of speech. 13. Bodily frames superior in size, in strength, in firmness, in endurance, in activity, we see among dumb

* A speech against the agrarian laws could not have been well received by the people, without being in the highest degree forcible and eloquent. "While you spoke, (O Cicero!) the tribes relinquished the agrarian law, that is, their own meat and drink." Plin. H. N. vii. 31.

† Being preliminary to a triumph, by which, however, it was not always followed. Cic. Ep. ad Div. xv. 5.

‡ See Cicero de Inv. i. 2; De Orat. i. 8.

creatures, and observe, too, that they have less need than we have of external assistance. To walk, to feed themselves, to swim over water, they learn, in less time than we can, from nature herself, without the aid of any other teacher. 14. Most of them, also, are equipped against cold by the produce of their own bodies; weapons for their defence are born with them; and their food lies before their faces; to supply all which wants mankind have the greatest difficulty. The divinity has therefore given us reason, superior to all other qualities, and appointed us to be sharers of it with the immortal gods. 15. But reason could neither profit us so much, nor manifest itself so plainly within us, if we could not express by speech what we have conceived in our minds; a faculty which we see wanting in other animals, far more than, to a certain degree, understanding and reflection. 16. For to contrive habitations, to construct nests, to bring up their young, to hatch them,* to lay up provision for the winter, to produce works inimitable by us, (as those of wax and honey,) is perhaps a proof of some portion of reason; but as, though they do such things, they are without the faculty of speech, they are called *dumb and irrational.* 17. Even to men, to whom speech has been denied, of how little avail is divine reason! If, therefore, we have received from the gods nothing more valuable than speech, what can we consider more deserving of cultivation and exercise? or in what can we more strongly desire to be superior to other men, than in that by which man himself is superior to other animals, especially as in no kind of exertion does labour more plentifully bring its reward? 18. This will be so much the more evident, if we reflect from what origin, and to what extent, the art of eloquence has advanced, and how far it may still be improved. 19. For, not to mention how beneficial it is, and how becoming in a man of virtue, to defend his friends, to direct a senate or people by his counsels, or to lead an army to whatever enterprise he may desire, is it not extremely honourable to attain, by the common understanding and words which all men use, so high a degree of

* Do they then bring them up before they hatch them? Yet the expression of Homer is exactly similar, *ἔτραφεν ἠδ' ἐγένοντο. Spalding.* Guthrie ignorantly supposed (let me be pardoned for noticing so small a matter) that *excludere* meant to exclude the young ones from the nest when they are able to shift for themselves.

esteem and glory as to appear not to speak or plead, but, as was the case with Pericles, to hurl forth lightning and thunder?

CHAPTER XVII.

Oratory is manifestly an art, § 1—4. Yet some have denied that it is, and said that its power is wholly from nature, 5—8. Examples from other arts, 9, 10. Every one that speaks is not an orator, 11—13. Opinion of Aristotle, 14. Other charges against oratory: that it has no peculiar subject or matter, and that it sometimes deceives, 15—18. Refutation of these charges, 19—21. Unfairly objected to it that it has no proper end, 22—26. Not pernicious because it sometimes misleads, 27—29. Another objection, that it may be exerted on either side of a question, and that it contradicts itself; answered, 30—36. Oratory is sometimes ignorant of the truth of what it asserts; but the same is the case with other arts and sciences, 36—40. Confirmation of its being an art, 41—43.

1. THERE would be no end if I should allow myself to expatiate, and indulge my inclination, on this head. Let us proceed, therefore, to the question that follows, *whether oratory be an art.* 2. That it is an art, every one of those who have given rules about eloquence has been so far from doubting, that it is shown by the very titles of their books, that they are written *on the oratorical art;* and Cicero also says, that what is called *oratory* is *artificial eloquence.* This distinction, it is not only orators that have claimed for themselves, (since they may be thought, perhaps, to have given their profession something more than its due,) but the philosophers, the Stoics, and most of the Peripatetics, agree with them. 3. For myself, I confess, that I was in some doubt whether I should look upon this part of the inquiry as necessary to be considered; for who is so destitute, I will not say of learning, but of the common understanding of mankind, as to imagine that the work of building, or weaving, or moulding vessels out of clay, is *an art*, but that oratory, the greatest and noblest of works, has attained such a height of excellence *without being an art*? Those, indeed, who have maintained the contrary opinion, I suppose not so much to have believed what they advanced, as to have been desirous of exercising their powers on a subject

of difficulty, like Polycrates, when he eulogized Busiris and Clytæmnestra; though he is said also to have written the speech that was delivered against Socrates; nor would that indeed have been inconsistent with his other compositions.*

5. Some will have oratory to be a natural talent, though they do not deny that it may be assisted by art. Thus Antonius, in Cicero *de Oratore*,† says that oratory is *an effect of observation*, not *an art;* but this is not advanced that we may receive it as true, but that the character of Antonius, an orator who tried to conceal the art that he used, may be supported. 6. But Lysias seems to have really entertained this opinion; for which the argument is, that the ignorant, and barbarians, and slaves, when they speak for themselves, say something that resembles an *exordium*, they *state facts*, *prove*, *refute*, and (adopting the form of a *peroration*) *deprecate*. 7. The supporters of this notion also avail themselves of certain quibbles upon words, that *nothing that proceeds from art was before art*, but that mankind have always been able to speak for themselves and against others; that teachers of the art appeared only in later times, and first of all about the age of Tisias and Corax;‡ that oratory was therefore before art, and is consequently not an art. 8. As to the period, indeed, in which the teaching of oratory commenced, I am not anxious to inquire; we find Phœnix, however, in Homer,§ as an instructor, not only in acting but in speaking, as well as several other orators; we see all the varieties of eloquence in the three generals,‖ and contests in eloquence proposed among the young men,¶ and among the figures on the shield of Achilles** are represented both law-suits and pleaders. 9.

* Because in every case he took the wrong side.

† I. 20; ii. 7, 8. The word *observatio*, however, as Spalding observes, is not to be found in either of these passages of Cicero.

‡ Corax was a Sicilian, who, about B.C. 470, secured himself great influence at Syracuse by means of his oratorical powers. He is said to have been the earliest writer on rhetoric. Tisias was his pupil. See Cic. Brut. 12; de Orat. i. 20; Quint. iii. 1, 8.

§ Il. ix. 432.

‖ The *copious* style in the oratory of Nestor; the *simple* in that of Menelaus; and the *middle* in that of Ulysses. See Aul. Gell. vii. 14; Clarke ad Il. iii. 213. Capperonier thinks that Phœnix, Ulysses, and Ajax are meant, the speakers in the deputation to Achilles, Iliad ix.

¶ Il. xv. 284: ὁπότε κοῦροι ἐρίσσειαν περὶ μύθων.

** Il. xviii. 497--508.

It would even be sufficient for me to observe, that *everything which art has brought to perfection had its origin in nature*, else, from the number of the arts must be excluded *medicine*, which resulted from the observation of what was beneficial or detrimental to health, and which, as some think, consists wholly in experiments, for somebody had, doubtless, bound up a wound before the dressing of wounds became an art, and had allayed fever by repose and abstinence, not because he saw the reason of such regimen, but because the malady itself drove him to it. 10. Else, too, *architecture* must not be considered an art, for the first generation of men built cottages without *art;* nor *music*, since singing and dancing, to some sort of tune, are practised among all nations. 11. So, if *any kind of speaking whatever* is to be called oratory, I will admit that oratory existed before it was an art; but if every one that speaks is not an orator, and if men in early times did not speak as orators, our reasoners must confess that an orator is formed by art, and did not exist before art. This being admitted, another argument which they use is set aside, namely, that *that has no concern with art which a man who has not learned it can do*, but that men who have not learned oratory can make speeches. 12. To support this argument they observe, that Demades,* a waterman, and Æschines,† an actor, were orators; but they are mistaken; for he who has not learned to be an orator cannot properly be called one, and it may be more justly said, that those men learned late in life, than that they never learned at all; though Æschines, indeed, had some introduction to learning in his youth, as his father was a teacher; nor is it certain that Demades did not learn; and he might, by constant practice in speaking, which is the most efficient mode of learning, have made himself master of all the power of language that he ever possessed. 13. But we may safely say, that he would have been a better speaker if he had learned, for he never ventured to write out his speeches for publication,‡ though we know that he produced considerable effect in delivering them.

14. Aristotle, for the sake of investigation, as is usual with him has conceived, with his peculiar subtlety, certain arguments at

* Sext. Empir. p. 291. Fabric. Harl. ii. p. 868.
† Demosth. pro Cor. p. 307, 314, 329, ed. Reisk.
‡ Cic. Brut. c. 9; Quint. xii. 10, 49.

variance with my opinion in his Gryllus;* but he has also written three books *on the art of rhetoric*, in the first of which he not only admits that it is an art, but allows it a connexion with civil polity, as well as with logic.† 15. Critolaus,‡ and Athenodorus, of Rhodes, have advanced many arguments on the opposite side. Agnon,§ by the very title of his book, in which he avows that he brings an accusation against rhetoric, has deprived himself of all claim to be trusted.‖ As to Epicurus,¶ who shrunk from all learning, I am not at all surprised at him.

16. These reasoners say a great deal, but it is based upon few arguments; I shall therefore reply to the strongest of them in a very few words, that the discussion may not be protracted to an infinite length. 17. Their first argument is with regard to the *subject* or *matter*, "for all arts," they say, "have some *subject*," as is true, "but that oratory has *no peculiar subject*," an assertion which I shall subsequently prove to be false. 18. The next argument is a more false charge, for "no art," they say, "acquiesces in false conclusions, since art cannot be founded but on perception, which is always true; but that oratory adopts false conclusions, and is, consequently, not an art." 19. That oratory sometimes advances what is false instead of what is true, I will admit, but I shall not for that reason acknowledge that the speaker acquiesces in false conclusions, for it is one thing for a matter to appear in a certain light to a person himself, and another for the person to make it appear in that light to others. A general often employs false representations, as did Hannibal, when, being hemmed in by Fabius, he tied faggots to the horns of oxen, and set them on fire, and, driving the herd up the opposite hills in the night, presented to the enemy the appearance of a

* The work is lost. Gryllus was the son of Xenophon, that was killed at Mantineia. Aristotle seems to have borrowed his name; and he related, according to Diog. Laërt. ii. 58, that many eulogies were written on Gryllus, even for the sake of pleasing his father. The Gryllus of Aristotle is mentioned by Diog. Laërt. v. 22. *Spalding.*

† Rhet. i. 2, 1.

‡ Compare ii. 15, 23. On his arguments against oratory, see Sext. Emp. p. 291, 292. *Spalding.*

§ Of Athenodorus and Agnon nothing certain is known. *Spalding.*

‖ The title of his book shows that he is not an impartial judge.

¶ See xii. 2, 24; Cic. de Fin. i. 7.

retiring army; but Hannibal merely deceived Fabius; he himself knew very well what the reality was. 20. Theopompus, the Lacedæmonian, when, on changing clothes with his wife, he escaped from prison in the disguise of a woman, came to no false conclusion concerning himself, though he conveyed a false notion to his guards. So the orator, whenever he puts what is false for what is true, knows that it is false, and that he is stating it instead of truth; he adopts, therefore, no false conclusion himself, but merely misleads another. 21. Cicero, when he threw a mist, as he boasts, over the eyes of the judges in the cause of Cluentius, was not himself deprived of sight; nor is a painter, when, by the power of his art, he makes us fancy that some objects stand out in a picture, and others recede, unaware that the objects are all on a flat surface.

22. But they allege also, that "all arts have a certain definite end to which they are directed; but that in oratory there is sometimes no end at all, and, at other times, the end which is professed is not attained." They speak falsely, however, in this respect likewise, for we have already shown, that oratory has an end, and have stated what that end is, an end which the true orator will always attain, for he will always *speak well*. 23. The objection might, perhaps, hold good against those who think that the end of oratory is *to persuade*, but my orator and his art, as defined by me, do not depend upon the result; he indeed who speaks directs his efforts towards victory, but when he *has spoken well*, though he may not be victorious, he has attained the full end of his art. 24. So a pilot is desirous to gain the port with his vessel in safety, but if he is carried away from it by a tempest, he will not be the less a pilot, and will repeat the well-known saying, "May I but keep the helm right!"* 25. The physician makes the health of the patient his object, but if, through the violence of the disease, the intemperance of the sick person, or any other circumstance, he does not effect his purpose, yet, if he has

* A proverbial expression, from the Greek *ὀρθὸν τὰν ναῦν*: a portion of a prayer to Neptune: Grant, O Neptune, that I may guide the ship right. Spalding refers to Cic. ad Q. Fr. i. 2; Ep. ad Div. xii. 25; Sen. Epist. 85; Aristid. in Rhod. 542 ed. Jebb; Stobæus. p. 577; Isidore, Orig., who gives from Ennius, *Ut clavum rectum teneam, navimque gubernem;* also Sen. Cons. ad M. Fil. c. 16; Erasmus, Adag. iii. 1, 28.

done everything according to rule, he has not lost sight of the object of medicine. So it is the object of an orator to speak well, for his *art*, as we shall soon show still more clearly, consists in the *act*, and not in the *result*. 26 That other allegation, which is frequently made, must accordingly be false also, that *an art knows when it has attained its end, but that oratory does not know*, for every speaker is aware when he has spoken well.

They also charge oratory with having recourse to vicious means, which no true arts adopt, because it advances what is false, and endeavours to excite the passions. 27. But neither of those means is dishonourable, when it is used from a good motive, and, consequently, cannot be vicious. To tell a falsehood is sometimes allowed, even to a wise man;* and the orator will be compelled to appeal to the feelings of the judges, if they cannot otherwise be induced to favour the right side. 28. Unenlightened men sit as judges,† who must, at times, be deceived, that they may not err in their decisions. If indeed judges were wise men: if assemblies of the people, and every sort of public council, consisted of wise men; if envy, favour, prejudice, and false witnesses, had no influence, there would be very little room for eloquence, which would be employed almost wholly to give pleasure. 29. But as the minds of the hearers waver, and truth is exposed to so many obstructions, the orator must use artifice in his efforts, and adopt such means as may promote his purpose, since he who has turned from the right way cannot be brought back to it but by another turning.

30. Some common sarcasms against oratory are drawn from the charge, that orators speak on both sides of a question; hence the remarks, that "*no art contradicts itself*, but that oratory contradicts itself;" that "*no art destroys what it has itself done*, but that this is the case with what oratory does;" that "*it teaches either what we ought to say, or what we ought not to say*, and that, in the one case, it cannot be an art, because it teaches what is not to be said, and, in the other, it cannot be an art, because, when it has taught what is to be said, it teaches also what is directly opposed to it." 31. All

* Cic. Off. ii. 14, 16, 17.

† The reader will remember that the *judices* of the Romans were similar to our jurymen, but more numerous. See Adam's Roman Antiquities, or Smith's Dict. of Gr. and Rom. Ant.

these charges, it is evident, are applicable only to that species of oratory which is repudiated by a good man and by virtue herself; since, where the cause is unjust, there true oratory has no place, so that it can hardly happen, even in the most extraordinary case, that a real orator, that is, a good man, will speak on both sides. 32. Yet, since it may happen, in the course of things, that just causes may, at times, lead two wise men to take different sides, (for the Stoics think that wise men may even contend with one another, if reason leads them to do so,*) I will make some reply to the objections, and in such a way that they shall be proved to be advanced groundlessly, and directed only against such as allow the name of orator to speakers of bad character. 33. For *oratory does not contradict itself;* one cause is matched against another cause, but not oratory against itself. If two men, who have been taught the same accomplishment, contend with one another, the accomplishment which they have been taught will not, on that account, be proved not to be an art; for, if such were the case, there could be no art in arms, because gladiators, bred under the same master, are often matched together; nor would there be any art in piloting a ship, because, in naval engagements, pilot is often opposed to pilot; nor in generalship, because general contends with general. 34. Nor does oratory *destroy what it has done,* for the orator does not overthrow the argument advanced by himself, nor does oratory overthrow it, because, by those who think that the end of oratory is to persuade, as well as by the two wise men, whom, as I said before, some chance may have opposed to one another, it is probability that is sought; and if, of two things, one at length appears more probable than the other, the more probable is not opposed to that which previously appeared probable; for as that which is more white is not adverse to that which is less white, nor that which is more sweet contrary to that which is less sweet, so neither is that which is more probable contrary to that which is less probable. 35. Nor does oratory ever *teach what we ought not to say,* or

* The Stoics were compelled to hold this opinion, for they said that to govern a state was the business of a wise man, and yet could not venture to affirm that a wise man was to be found in any particular state only. I cannot at this moment, however, find any passage among the ancient authors expressly to that effect. *Spalding.*

that which is contrary to what we ought to say, but that which we ought to say in whatever cause we may take in hand. 36. And truth, though generally, is not always to be defended; the public good sometimes requires that a falsehood should be supported.*

In Cicero's second book *De Oratore*,† are also advanced the following objections: *that art has place in things which are known, but that the pleading of an orator depends on opinion, not on knowledge, since he both addresses himself to those who do not know, and sometimes says what he himself does not know.* 37. One of these points, whether the judges have a knowledge of what is addressed to them, has nothing to do with the art of the orator; to the other, that *art has place in things which are known*, I must give some answer. Oratory is the art of speaking well, and the orator knows how to speak well. 38. But it is said, he does not know whether what he says is true; neither do the philosophers, who say that fire, or water, or the four elements, or indivisible atoms, are the principles from which all things had their origin,‡ know that what they say is true; nor do those who calculate the distances of the stars, and the magnitudes of the sun and the earth, yet every one of them calls his system an *art*;§ but if their reasoning has such effect that they seem not to *imagine*, but, from the force of their demonstrations, to *know* what they assert, similar reasoning may have a similar effect in the case of the orator. 39. But, it is further urged, he does not know whether the cause which he advocates has truth on its side; nor, I answer, does the physician know whether the patient, who says that he has the head-ache, really has it, yet he will treat him on the assumption that his assertion is true, and medicine will surely be allowed to be an art. Need I add, that oratory does not always purpose to say what is true, but does always purpose to say what is like truth? but the orator must know whether what he says is like truth or not. 40. Those who are unfavourable to oratory add, that pleaders often defend, in certain causes, that which they have assailed in others; but this is the fault, not of the art, but of the person.

* Compare c. 7, sect. 27, and sect. 27—29 of this chapter.
† C. 7. The words are put into the mouth of Antonius.
‡ See the first book of Lucretius.
§ Or *science*, as we should now term it.

These are the principal charges that are brought against oratory. There are others of less moment, but drawn from the same sources.

41. But that it is an *art*, may be proved in a very few words; for whether, as Cleanthes maintained, *an art is a power working its effects by a course*, that is *by method*, no man will doubt that there is a certain course and method in oratory; or whether that definition, approved by almost everybody, that *an art consists of perceptions* consenting and co-operating to some end useful to life*, be adopted also by us, we have already shown that everything to which this definition applies is to be found in oratory. 42. Need I show that it depends on understanding and practice, like other arts? If logic be an art, as is generally admitted, oratory must certainly be an art, as it differs from logic rather in *species* than in *genus*. Nor must we omit to observe that in whatever pursuit one man may act according to a method, and another without regard to that method, that pursuit is an art; and that in whatever pursuit he who has learned succeeds better than he who has not learned, that pursuit is an art.

43. But, in the pursuit of oratory, not only will the learned excel the unlearned, but the more learned will excel the less learned; otherwise there would not be so many rules in it, or so many great men to teach it. This ought to be acknowledged by every one, and especially by me, who allow the attainment of oratory only to the man of virtue.

CHAPTER XVIII.

Arts or sciences are of three kinds; rhetoric is a practical art or science, § 1, 2. Partakes of the nature of arts of other kinds, 3—5.

1. But as some arts consist merely in an insight into things, that is, knowledge of them, and judgment concerning them, such as *astronomy*, which requires no *act*, but is confined to a mere understanding of the matters that form the subject

* *Perceptionum.*] From the Greek καταλήψεις, signifying "things thoroughly comprehended and understood."

of it (a sort of art which is called θεωρητική, "theoretic"*); others in action, the object of which lies in the act, and is fulfilled in it, leaving nothing produced from it (a sort of art which is called πρακτική, "practic"), as *dancing;* 2. others in production, which attain their end in the execution of the work which is submitted to the eye (a sort which we call ποιητική, "productive"), as *painting*, we may pretty safely determine that *oratory* consists in act, for it accomplishes in the act all that it has to do. Such indeed has been the judgment pronounced upon it by every one.

3. To me, however, it appears to partake greatly of the other sort of arts; for the subject of it may sometimes be restricted to contemplation; since there will be oratory in an orator even though he be silent; and if, either designedly, or from being disabled by any accident, he has ceased to plead, he will not cease to be an orator, more than a physician who has left off practice ceases to a physician. 4. There is some enjoyment, and perhaps the greatest of all enjoyments, in retired meditation, and the pleasure derived from knowledge is pure when it is withdrawn from action, that is, from toil, and enjoys the calm contemplation of itself. 5. But oratory will also effect something similar to a productive art in written speeches and historical compositions, a kind of writings which we justly consider as allied to oratory. Yet if it must be classed as one of the three sorts of arts which I have mentioned, let it, as its performance consists chiefly in the mere act, and as it is most frequently exhibited *in act*, be called an *active*, or a *practical* art, for the one term is of the same signification as the other.

CHAPTER XIX.

Nature and art; nature contributes more to oratory, in students of moderate ability, than art; in those of greater talent, art is of more avail; an example.

1. I AM aware that it is also a question whether *nature* or *learning* contributes most to oratory. This inquiry, however,

* Such *artes* we call "sciences." The term *art* we distinguish from science by applying it only to that which produces something, as painting, architecture.

has no concern with the subject of my work; for a perfect orator can be formed only with the aid of both; but I think it of great importance how far we consider that there is a question * on the point. 2. If you suppose either to be independent of the other, nature will be able to do much without learning, but learning will be of no avail without the assistance of nature. But if they be united in equal parts, I shall be inclined to think that, when both are but moderate, the influence of nature is nevertheless the greater; but finished orators, I consider, owe more to learning than to nature. Thus the best husbandman cannot improve soil of no fertility, while from fertile ground something good will be produced even without the aid of the husbandman; yet if the husbandman bestows his labour on rich land, he will produce more effect than the goodness of the soil of itself. 3. Had Praxiteles attempted to hew a statue out of a millstone, I should have preferred to it an unhewn block of Parian marble;† but if that statuary had fashioned the marble, more value would have accrued to it from his workmanship than was in the marble itself. In a word, nature is the material for learning; the one forms, and the other is formed. Art can do nothing without material; material has its value even independent of art; but perfection of art is of more consequence than perfection of material.

CHAPTER XX.

Whether rhetoric be a *virtue*, as some call it, § 1—4. Proofs of this, according to the philosophers, 5—7. Other proofs, 8—10.

1. It is a question of a higher nature, whether oratory is to be regarded as one of those *indifferent* arts, which deserve neither praise nor blame in themselves, but become useful or

* *Quam—quæstionem.*] This is obscurely expressed, says Spalding; but *quam* is equivalent to *qualem, quàm latè comprehensam.*

† The lover of art will hardly agree with Quintilian. *Spalding.* But, as Rollin observes, nothing could have been less suitable for sculpture than the stone used for millstones; and Quintilian might suppose that it would have been impossible, even for a Praxiteles, to have produced even a tolerable statue from it.

otherwise according to the characters of those who practise them; or whether it is, as many of the philosophers are of opinion, a positive *virtue*.*

2. The way, indeed, in which many have proceeded and still proceed in the practice of speaking, I consider either as *no art*, ἀτεχνία, as it is called, (for I see numbers rushing to speak without rule or learning, just as impudence or hunger has prompted them,) or as it were a *bad art*, which we term κακοτεχνία; for I imagine that there have been many who have exerted, and that there are some who still exert, their talent in speaking to the injury of mankind. 3. There is also a kind of ματαιοτεχνία, a vain imitation of art, which indeed has in itself neither good nor evil, but a mere frivolous exercise of skill, such as that of the man who sent grains of vetches, shot from a distance in succession, and without missing, through a needle, and whom Alexander, after witnessing his dexterity, is said to have presented with a bushel of vetches; which was indeed a most suitable reward for his performance.†

4. To him I compare those who spend their time, with great study and labour, in the composition of declamations, which they strive to make as unlike as possible to anything that happens in real life.

But that oratory which I endeavour to teach, of which I conceive the idea in my mind, which is attainable only by a good man, and which alone is true oratory, must be regarded as *a virtue*.

* See note on c. 15, sect. 20. "*Virtues* are distinguished by Aristotle into two kinds, the *intellectual*, which are exerted in the discovery of truth and the accomplishment of our objects, under which head oratory may be included, as it is an art; and the *moral*, which influence the will, actions, and conduct, under which head Quintilian shows that oratory may also be ranked as a virtue. *Turnebus*.

† It has been a question what sort of performance we should conceive this man's to have been. Naudæus, or Naudé, in his *Syntagma de Studio Liberali*, cited by Bayle, Art. Macedonia, note S, says that the man put a pea in his mouth, and, blowing it out, made it stick upon the point of the needle. This interpretation is adopted by Bayle, and by Spalding; by Bayle with the utmost confidence, and by Spalding with some hesitation, for he admits that the verb *inserere* is hardly applicable to the fixing of peas on the point of a needle. For my part, I consider that the expression *inserere in acum* wholly forbids us to understand anything else than that the peas were driven through the needle's eye. We may suppose it to have been a peculiar needle, with a large eye, made for the purpose. How the peas were impelled, Quintilian leaves us to conjecture.

5. This is an opinion which the philosophers support by many subtle arguments, but which appears to me to be more clearly established by the simpler mode of proof which follows, and which is peculiarly my own. What is said by the philosophers is this: If it is a quality of virtue to be consistent with itself as to what ought to be done and what ought not to be done, (that quality, namely, which is called *prudence*,) the same quality will have its office as to what ought to be said or not to be said. 6. And if there are virtues, for the generation of which, even before we receive any instruction, certain principles and seeds are given us by nature,* (as for that of justice, of which some notion is manifested even in the most ignorant and the most barbarous,) it is evident that we are so formed originally as to be able to speak for ourselves, though not indeed perfectly, yet in such a manner as to show that certain seeds of the faculty of eloquence are in us. 7. But in those arts which have no connexion with virtue, there is not the same nature.† As there are two kinds of speech, therefore, the *continuous*, which is called *oratory*, and the *concise*, which is termed *logic*, (which Zeno thought so nearly connected that he compared the one to a clenched fist, and the other to an open hand,) if the art of disputation‡ be a virtue, there will be no doubt of the virtue of that which is of so much more noble and expansive a nature.

But I wish the reader to understand this more fully and plainly from what is done by oratory; for how will an orator succeed in *eulogy*, unless he has a clear knowledge of what is honourable and what is disgraceful? Or in *persuasion*, unless he understands what is advantageous? Or in *judicial pleadings*, unless he has a knowledge of justice? Does not oratory also demand fortitude, as the orator has often to speak in opposition to the turbulent threats of the populace, often with perilous defiance of powerful individuals, and sometimes, as on the trial of Milo,

* The Stoics and Academics said that the seeds of virtues were innate in us, and that, if we would but suffer them to grow, they would secure us a happy life. *Turnebus.*

† I wish that he had given an illustration of this position.

‡ *Ars disputatrix.*] That is, dialectics or logic. If mere dry logic be a virtue, how much more will rich and forcible eloquence be a virtue!

amidst surrounding weapons of soldiers? So that if oratory be not a virtue, it cannot be perfect.*

9. If, moreover, there is a sort of virtue in every species of animals, in which it excels the rest, or the greater number, of other animals, as force in the lion, and swiftness in the horse, and it is certain that man excels other animals in reason and speech, why should we not consider that the distinctive virtue of man lies as much in eloquence as in reason? Crassus in Cicero† justly makes an assertion to this effect: "For eloquence," says he, "is one of the most eminent virtues;" and Cicero himself, in his own character, both in his epistles to Brutus,‡ and in many other passages of his writings,§ calls eloquence a virtue.

10. But, it may be alleged, a vicious man will sometimes produce an exordium, a statement of facts, and a series of arguments, in such a way that nothing shall be desired in them. So, we may answer, a robber will fight with great bravery, yet fortitude will still be a virtue; and a dishonest slave will bear torments without a groan, yet endurance of pain will still merit its praise. Many other things of the same nature occur, but from different principles of action. Let what I have said, therefore, as to eloquence being a virtue, be sufficient, for of its usefulness I have treated above.

* On the contrary, if oratory be *perfect oratory*, it must necessarily be a *virtue*.

† De Orat. iii. 14.

‡ This passage the learned have in vain sought in the Epistles to Brutus; nor is their disappointment at all wonderful, if the ingenious and learned Tunstall is right, in his Epistle to Middleton, in condemning those epistles as spurious. His condemnation has an authoritative supporter in Ruhnken, ad Vell. Pat. ii. 12. *Spalding.* Of the spuriousness of the epistles to Brutus, as they are called, few, surely, will now be found to doubt. Such is their poverty of matter, and affectation of style, that it is wonderful that Middleton should ever have thought them comparable to the genuine letters of Cicero.

§ Partit. Orat. c. 23, init.; Acad. Q. i. 2.

CHAPTER XXI.

Opinions as to the subject of rhetoric, § 1—4. That of Quintilian, which agrees with those of Plato and Cicero, 5, 6. Objections to it noticed, 7—11. No dispute between rhetoric and philosophy about their respective subjects, 12, 13. The orator not obliged to know everything, 14, 15. He will often speak better on arts than the artists themselves, 16—19. The opinion of Quintilian supported by those of other authors, 20—23.

1. As to the *material* of oratory, some have said that it is *speech;* an opinion which Gorgias in Plato* is represented as holding. If this be understood in such a way that a discourse, composed on any subject, is to be termed a *speech*, it is not the material, but the work; as the statue is the work of a statuary; for speeches, like statues, are produced by art. But if by this term we understand mere words, words are of no effect without matter. 2. Some have said that the material of oratory is *persuasive arguments;* which indeed are part of its business, and are the produce of art, but require material for their composition. Others say that its material is *questions of civil administration;* an opinion which is wrong, not as to the quality of the matter, but in the restriction attached; for such questions are the subject of oratory, but not the only subject. 3. Some, as oratory is a *virtue*, say that the subject of it is *the whole of human life.* Others, as no part of human life is affected by every virtue, but most virtues are concerned only with particular portions of life, (as *justice*, *fortitude*, *temperance*, are regarded as confined to their proper duties and their own limits,) say that oratory is to be restricted to one special part, and assign to it the *pragmatic* department of ethics, or *that which relates to the transactions of civil life.*†

4. For my part, I consider, and not without authorities to support me, that the material of oratory is *everything that may come before an orator for discussion.* For Socrates in Plato seems to say to Gorgias* that *the matter of oratory is*

* Plato Gorg. p. 449 E.

† *Eique locum in ethice* negotialem *assignant, id est, πραγματικόν.*] By *pars negotialis* he means that which relates to law proceedings, civil and judicial causes. *Turnebus.* Or that which relates to the acts of civil life, or the conduct of affairs in general. *Capperonier.*

‡ Gorg. p. 449—454.

not in words but in things. In the Phædrus* he plainly shows that oratory has place, not only in judicial proceedings and political deliberations, but also in private and domestic matters. Hence it is manifest that this was the opinion of Plato himself.† 5. Cicero, too, in one passage,‡ calls the material of oratory the topics which are submitted to it for discussion, but supposes that particular topics only are submitted to it. But in another passage § he gives his opinion that an orator has to speak upon all subjects, expressing himself in the following words: "The art of the orator, however, and his very profession of speaking well, seems to undertake and promise that he will speak elegantly and copiously on whatever subject may be proposed to him." 6. In a third passage,‖ also, he says: "But by an orator, whatever occurs in human life (since it is on human life that an orator's attention is to be fixed, as the matter that comes under his consideration) ought to have been examined, heard of, read, discussed, handled, and managed."

7. But this *material* of oratory, as we define it, that is, the subjects that come before it, some have at one time stigmatized as indefinite,¶ at another as not belonging to oratory, and have called it, as thus characterised, an *ars circumcurrens*, an infinitely discursive art, as discoursing on any kind of subject. 8. With such as make these observations I have no great quarrel; for they allow that oratory speaks on all matters, though they deny that it has any pecular *material*, because its material is manifold. 9. But though the material be manifold, it is not infinite; and other arts, of less consideration, deal with manifold material, as *architecture*, for instance, for it has to do with everything that is of use for building; and the art of *engraving*, which works with gold, silver, brass, and iron. As to *sculpture*, it extends itself, besides the metals which I have just named, to wood, ivory, marble, glass, and jewels. 10. Nor will a topic cease to belong to the orator because the professor of another art may treat of it; for if I should ask what is the material of

* P. 261 A.

† As being put into the mouth of Socrates.

‡ De Orat. i. 15; Inv, i. 4.

§ De Orat. i. 6.

‖ De Orat. iii. 14.

¶ *Infinitam.*] Indefinite, indeterminate; because it represents oratory as devoted to no particular subject, but as ready to exert itself on any topic on which men can speak. *Capperonier*

the statuary, the answer will be "brass;" or if I should ask what is the material of the founder of vases, that is the worker in the art which the Greeks call χαλκευτική, the reply would also be "brass;" though vases differ very much from statues. 11. Nor ought medicine to lose the name of an art, because anointing and exercise are common to it with the palæstra, or because a knowledge of the quality of meats is common to it with cookery.

12. As to the objection which some make, that it is the business of *philosophy* to discourse of what is good, useful, and just, it makes nothing against me; for when they say a philosopher, they mean a good man; and why then should I be surprised that an orator, whom I consider to be also a good man, should discourse upon the same subjects? 13. especially when I have shown, in the preceding book,* that philosophers have taken possession of this province because it was abandoned by the orators, a province which had always belonged to oratory, so that the philosophers are rather trespassing upon our ground. Since it is the business of logic, too, to discuss whatever comes before it, and logic is uncontinuous oratory, why may not the business of continuous oratory be thought the same?

14. It is a remark constantly made by some, that *an orator must be skilled in all arts if he is to speak upon all subjects.* I might reply to this in the words of Cicero,† in whom I find this passage: "In my opinion no man can become a thoroughly accomplished orator, unless he shall have attained a knowledge of every subject of importance, and of all the liberal arts;" but for my argument it is sufficient that an orator be acquainted with the subject on which he has to speak. 15. He has not a knowledge of all causes, and yet he ought to be able to speak upon all. On what causes, then, will he speak? on such as he has learned. The same will be the case also with regard to the arts and sciences; those on which he shall have to speak he will study for the occasion, and on those which he has studied he will speak.

16. What then, it may be said, will not a builder speak of building, or a musician of music, better than an orator? Assuredly he will speak better, if the orator does not know what is the subject of inquiry in the case before him, with regard to

* Procem. sect. 10 *seqq.* † De Orat. i. 6.

matters connected with those sciences. An ignorant and illiterate person, appearing before a court, will plead his own cause better than an orator who does not know what the subject of dispute is; but an orator will express what he has learned from the builder, or the musician, or from his client, better than the person who has instructed him. 17. But the *builder* will speak well on *building*, or the *musician* on *music*, if any point in those arts shall require to be established by his opinion; he will not be an orator, but he will perform his part like an orator, as when an unprofessional person binds up a wound, he will not be a surgeon, yet he will act as a surgeon.

18. Do subjects of this kind never come to be mentioned in *panegyrical*, or *deliberative*, or *judicial* oratory? When it was under deliberation, whether a harbour should be constructed at Ostia,* were not orators called to deliver opinions on the subject? yet what was wanted was the professional knowledge of the architect. 19. Does not the orator enter on the question, whether discolorations and tumours of the body are symptoms of ill health or of poison?† yet such inquiries belong to the profession of medicine? Will an orator never have to speak of dimensions and numbers? yet we may say that such matters belong to mathematics; for my part, I believe that any subject whatever may, by some chance, come under the cognizance of the orator. If a matter does not come under his cognizance, he will have no concern with it.

20. Thus I have justly said, that *the material of oratory is everything that is brought under its notice for discussion*, an assertion which even our daily conversation supports, for whenever we have any subject on which to speak, we often signify by some prefatory remark, that the matter is laid before us. 21. So much was Gorgias‡ of opinion that an orator must speak of everything, that he allowed himself to be questioned by the people in his lecture-room, upon any subject on which any one of them chose to interrogate him. Hermagoras also, by saying, that "the matter of oratory lies

* See Suet. Claud. c. 20, where it is stated that the work had often been contemplated by Julius Cæsar, but deferred from time to time on account of its difficulty.

† Cicero touches on this medical part, so to speak, of eloquence in his speech for Cluentius, c. 10. *Spalding.*

‡ Plato Gorg. p. 447 C. In reference to this passage of Plato, see Cic. de Orat. iii. 32; i. 22; de Inv. i. 5; de Fin. ii. 1.

in the cause and the questions * connected with it," comprehends under it every subject that can possibly come before it for discussion. 22. If indeed he supposed that *the questions* do not belong to oratory, he is of a different opinion from me; but if they do belong to oratory, I am supported by his authority, for there is no subject that may not form part of a cause or the questions connected with it. 23. Aristotle,† too, by making three kinds of oratory, the *judicial*, the *deliberative*, and the *demonstrative*, has put almost everything into the hands of the orator, for there is no subject that may not enter into one of the three kinds.

24. An inquiry has been also started, though by a very few writers, concerning the *instrument* of oratory. The instrument I call *that without which material cannot be fashioned and adapted to the object which we wish to effect.* But I consider that it is not the art that requires the instrument, but the artificer. Professional knowledge needs no tool, as it may be complete though it produces nothing, but the artist must have his tool, as the engraver his graving-instrument, and the painter his pencils. I shall therefore reserve the consideration of this point for that part of my work in which I intend to speak of *the orator.* ‡

* See iii. 5, 16; iii. 6, 2. The questions meant are *general questions*, as, "Whether the senses may be trusted," "Whether an old man ought to marry," and the like, which Cicero excludes from the department of the orator, de Invent. i. 6.

† Rhet. i. 3, 3; Cic. de Invent. i. 5.

‡ B. xii. c. 5.

BOOK III.

CHAPTER I.

Quintilian proposes to consider the various branches and precepts of oratory more fully than they are generally set forth in treatises on the art; a part of his work more desirable for students than agreeable to them, § 1—4. Diversities of opinions and methods, 5—7. Various writers on the art; the Greeks, 8—15. Followers of Hermagoras, Apollodorus, Theodorus, 16—18. The Romans, 19—21. Quintilian will give his own opinion on matters as they occur, 22.

1. Since I have examined in the second book what *oratory* is, and what is its *object;* since I have shown, as well as my abilities allowed, that it is an *art*,* that it is *useful*,† and that it is a *virtue*;‡ and since I have put under its power every subject§ on which it may be necessary to speak, I shall now proceed to show whence it had its origin,‖ of what parts it consists,¶ and how every department of it is to be contemplated** and treated; for most of the writers of books on the art have stopped even short of these limits;†† so that Apollodorus‡‡ confined himself to judicial pleadings only.

2. Nor am I ignorant that those who are studious of oratory have desired to receive from me that part of my work, of which this book proceeds to treat, more anxiously than any other; a part which, though it will be the most difficult to myself, from the necessity of examining a vast diversity of opinions, will yet perhaps afford the least pleasure to my readers, since it

* B. ii. c. 17.
† B. ii. c. 16.
‡ B. ii. c. 20.
§ B. ii. c. 21.
‖ By what authors and writers rhetoric has been invented and taught; and what is its origin, whether art or nature. *Capperonier.*
¶ He alludes to the five parts, *invention, arrangement, language, memory, delivery.* Capperonier.
** *Invenienda.*] "Conceived of;" what idea we must form of each part; and how we must produce matter with reference to it.
†† *Intra quem modum.*] Gesner rightly observes that the preposition *intra* signifies that previous writers on rhetoric had confined themselves within a less compass than that to which Quintilian had extended his work. Compare xi. 3, 8; 45. *Spalding.*
‡‡ See sect. 17.

admits merely of a dry exposition of rules. 3. In other parts I have endeavoured to introduce some little embellishment, not with the view of displaying my own ability, (since for that purpose a subject of more fertility might have been chosen,) but in order that, by that means, I might more successfully attract youth to the study of those matters which I thought necessary for their improvement; if, possibly, being stimulated by some pleasure in the reading, they might more willingly learn those precepts of which I found that a bare and dry enumeration might be repulsive to their minds, and offend their ears, especially as they are grown so delicate. 4. It was with such a view that Lucretius * said he put the precepts of philosophy into verse; for he uses, as is well known, the following simile

Ac veluti pueris absinthia tetra medentes
Quum dare conantur, prius oras pocula circum
Aspirant mellis dulci flavoque liquore:

"And as physicians, when they attempt to give bitter wormwood to children, first tinge the rim round the cup with the sweet and yellow liquid of honey," &c. 5. But I fear that this book may be thought to contain very little honey and a great deal of wormwood, and may be more serviceable for instruction than agreeable. I am afraid, too, that it may find the less favour, as it will contain precepts not newly invented, for the most part, by me, but previously given by others; and it may also meet with some who are of contrary opinions, and who will be ready to assail it; because most authors, though they have directed their steps to the same point, have made different roads towards it, and each has drawn his followers into his own. 6. Their adherents, moreover, approve whatever path they have pursued, and you will not easily alter prepossessions that have been inculcated into youth, for every one had rather have learned than learn.

7. But there is, as will appear in the progress of the book, an infinite diversity of opinions among authors; as some have

* B. i. v. 934; iv. 11. In the first of these passages, however, we find *Sed*, and in the second *Nam*, instead of *Ac*, and, instead of *aspirant, contingunt*. Such variations have led to the supposition that there were two editions of Lucretius's poem; see Spalding's note, and the "Remarks" prefixed to my translation of Lucretius, p. vii. viii. Spalding observes that "aspirare mellis liquore" will be equivalent to "odore et sapore mellis imbuere."

added their own discoveries to what was previously rude and imperfect, and then others, that they might seem to produce something themselves, have even altered what was right. 8. The first writer who, after those that the poets have mentioned, touched at all upon oratory, is said to have been Empedocles,* and the most ancient composers of rules on the art were Corax and Tisias,† natives of Sicily; to whom succeeded a native of the same island, Gorgias the Leontine, who, as is said, was a pupil of Empedocles. 9. Gorgias, through the advantage of a very long life, (for he lived a hundred and nine years,) flourished as a contemporary with many rhetoricians; and was thus a rival of those whom I have just named, and survived even the age of Socrates. 10. At the same period with him lived Thrasymachus of Chalcedon, Prodicus of Ceos, Protagoras of Abdera, (from whom Euathlus is said to have learned the art of oratory, on which he published a treatise, for ten thousand denarii,‡) Hippias of Elis, and Alcidamus of Elæa, whom Plato calls Palamedes; 11. There was also Antiphon, (who was the first that wrote speeches § and who, besides, composed a book of rules on rhetoric, and was thought to have pleaded his own cause on a trial with great ability,) Polycrates, by whom I have said‖ that a speech was written against Socrates, and Theodorus of Byzantium, one of those whom Plato¶ calls λογοδαίδαλοι, "artificers in words." 12. Of these, the first that treated general subjects were Protagoras, Gorgias, Prodicus, and Thrasymachus. Cicero, in his Brutus,** says that no composition, having any rhetorical embellishment, was written before the time of Pericles, but that some pieces of his were in circulation. For my part, I find nothing

* *Movisse aliqua circa rhetoricen Empedocles dicitur.*] Ἐμπεδοκλέα ὁ Ἀριστοτέλης φησι πρῶτον ῥητορικὴν κεκινηκέναι. Sextus Empir. p. 370 of Fabricius's edition, who observes that Quintilian uses the same kind of expression as Aristotle. The book of Aristotle, from which the phrase was taken, called Sophistes, is now lost; Diog. Laert. viii. 57. See Spalding's note.

† See ii. 17, 7.

‡ £312 10*s*., the denarius being valued at 7½*d*.

§ He was the first that wrote speeches, and sold them to accused persons, or persons going to law, to use as their own, as is related by Ammianus Marcellinus, xxx. 4. *Spalding.* 9. v.

‖ See ii. 17, 4.

¶ Phædr. p. 266 E.

** C. 7.

answerable to the fame of such eloquence as his,* and am therefore the less surprised that some should think that nothing was written by Pericles, but that the writings, which were circulated under his name, were written by others.

13. To these succeeded many other rhetoricians, but the most famous of the pupils of Gorgias was Isocrates; though authors, indeed, are not agreed as to who was his master; I, however, trust to Aristotle† on that point. 14. From this time different roads, as it were, began to be formed; for the disciples of Isocrates were eminent in every department of learning; and, when he was grown old, (he lived to complete his ninety-eighth year,) Aristotle began to teach the art of oratory in his afternoon lessons,‡ frequently parodying, as is said, the well-known verse from the tragedy of Philoctetes, thus:

Αἰσχρὸν σιωπᾶν, καὶ Ἰσοκράτην ἐᾶν λέγειν,§

"It is disgraceful to be silent, and to allow Isocrates to speak." A treatise on the art of oratory was published by each of them;

* See xii. 2, 42; 10, 49; where Quintilian positively asserts that no writings of Pericles were extant in his time; and Ruhnken, in his Hist. Crit. Or. Gr. p. 38, brings plenty of authorities to support that assertion, though Cicero (Brut. c. 7, and de Orat. ii. 22) seems to have had greater faith in the genuineness of the writings circulated under the name of Pericles. Could the genuine writings of Pericles have been lost between the age of Cicero and that of Quintilian? I think not. See, on this doubtful subject, Fabr. Biblioth. ed. Harles. vol. ii. p. 746. *Spalding.*

† Aristotle must have expressly stated this in some part of his writings, but we find no such passage in any of those left to us. Many of his books are lost, however; as the Theodectea; see ii. 15, 10. Dionysius Halicarnassensis (Tom. ii. p. 94) says that not only Gorgias was a preceptor of Isocrates, but also Prodicus of Ceos, and Tisias of Syracuse, and mentions, as an opinion of some, that he was instructed by Theramenes. See Pseudo-Plutarch, p. 836 F., and Suidas under Isocrates. *Spalding.*

‡ See Aul. Gell. xx. 5, who says that what Aristotle taught on rhetoric was among his *exoterica*, instructions which he used to give in the evening, when his audience was less select than in the morning.

§ See Cicero de Orat. iii. 35; Tusc. i. 4; Orat. c. 19. Bentley, Menage, and others have corrected καὶ Ἰσοκράτην into Ἰσοκράτην δ' for the sake of the metre. Hermann, Opusc. v. iii. p. 129, supposes, with Bentley, that the verse is from the Philoctetes of Euripides. Diogenes Laertius (v. 3) says that the verse was applied, not to Isocrates, but to Xenocrates.

but Aristotle made his to consist of several books. At the same time lived Theodectes, of whose work I have already spoken. 15. Theophrastus, also, a disciple of Aristotle, wrote very carefully on rhetoric; and since that time the philosophers, especially the leaders of the Stoics and Peripatetics, have paid even greater attention to the subject than the rhetoricians. 16. Hermagoras then made, as it were, a way for himself, which most orators have followed; but Athenæus* appears to have been most nearly his equal and rival. Afterwards Apollonius Molon, Areus,† Cæcilius, and Dionysius of Halicarnassus, wrote much upon the art. 17. But the two that attracted most attention to themselves were Apollodorus of Pergamus, who was the teacher of Cæsar Augustus at Apollonia, and Theodorus of Gadara, who preferred to be called a native of Rhodes, and whose lectures Tiberius Cæsar, when he retired into that island, is said to have constantly attended. 18. These two rhetoricians taught different systems, and their followers were thence called Apollodoreans and Theodoreans,‡ after the manner of those who devote themselves to certain sects in philosophy. But the doctrines of Apollodorus you may learn best from his disciples, of whom the most exact in delivering them in Latin was Caius Valgius,§ in Greek Atticus.‖ Of Apollodorus himself the only work on the art seems to have been that addressed to Matius;¶ for the epistle ritten to Domitius** does not acknowledge the other books attributed to him. The writings of Theodorus were more numerous; and there are some now living who have seen his disciple Hermagoras.

19. The first among the Romans, as far as I know, that

* See ii. 15. 23

† See i. 15, 36.

‡ See ii. 11, 2.

§ Caius Valgius Rufus, a grammarian and rhetorician in the time of Augustus, to whom he inscribed a book on herbs, Plin. H. N. xxv. 2. Whether the learned have rightly, or too curiously, distinguished him from Titus Valgius Rufus, the poet, the friend of Horace and Tibullus, I leave for the consideration of others. *Spalding.* See c. 3, sect. 17.

‖ Probably the Dionysius Atticus mentioned by Strabo, xiii. p. 635.

¶ I suppose that this is the Matius mentioned by Pliny, H. N. xii. 6, by whom he is called *Divi Augusti amicus. Burmann.*

** I consider that this is the Domitius Marsus, the elegant poet and prose writer in the time of Augustus; he is mentioned by Quintilian again, vi. 3. *Spalding.*

composed anything on this subject, was Marcus Cato the Censor;* after whom Marcus Antonius† made some attempt in it; it is the only writing that is extant of his, and is in quite an unfinished state. Less celebrated writers followed, whose names, if occasion shall anywhere require, I will not forbear to mention. 20. But Marcus Tullius Cicero threw the greatest light, not only on eloquence itself, but also on its precepts, giving the only model of excellence among us in speaking and in teaching the art of speaking; after whom it would be most becoming to be silent, if he himself had not said that his books on rhetoric‡ escaped from his hands when he was very young, and if he had not intentionally omitted, in his Dialogues on Oratory, those minor points on which most learners require instruction.§ 21. Cornificius‖ wrote much on the same subject; Stertinius something considerable; and Gallio¶ the father a little. But Celsus** and Lænas,‡‡ who preceded Gallio, and Virginius,§§ Pliny,‖‖ and Tutilius¶¶ in our own age, have written on the art with greater accuracy.

* See ii. 15, 1.

† See Cicero de Orat. i. 47, 48.

‡ See note on ii. 15, 6.

§ See De Orat. i. 6; 36; ii. 3; Epist. ad Div. i. 9.

‖ Probably the Quintus Cornificius to whom Cicero writes, Epist. ad Div. xii. 17, 18, 23.

¶ This rhetorician is not mentioned by any other writer, unless he be the Maximus Stertinius noticed by Senecca, Controv. ix. *Spalding.*

** He is noticed again by Quintilian, ix. 2, 91, from which passage, compared with Sen. Controv. p. 159, ed. Bip., it clearly appears that he was the same person to whom Seneca the father often alludes, and calls Junius Gallio, and who adopted the son of that Seneca, the eldest brother of the philosopher. He was the friend of Ovid (Senec. Suas. iii. p. 25), whose epistle from Pontus, iv. 11, is perhaps addressed to him. *Spalding.*

†† See ii. 15, 22.

‡‡ See x. 7, 32; xi. 3, 183. In the latter passage he is called Lænas Popilius. I find no mention of him in any author besides Quintilian. *Spalding.*

§§ Mentioned by Tacitus, Ann. xv. 71: *Virginius studia juvenum eloquentiâ fovebat;* also by Quintilian iii. 6, 44; iv. 1, 23; vii. 4, 24; xi. 3, 26. *Spalding.*

‖‖ The author of the Natural History, who wrote three books on the education of an orator *ab incunabulis;* Plin. Ep. iii. 5, 5.

¶¶ Mentioned by Martial, v. 57, 6. Some suppose, from Plin. Ep. vi. 32, that Quintilian married his daughter. Spalding concurs with Gedoyn in supposing that we should read, in that passage of Pliny, *Quintiano* instead of *Quintiliano.*

There are also at this very time eminent writers on the same subject, who, if they had embraced every part of it, would have relieved me from my present task; but I forbear to mention the names of living authors; the due time for honouring them will arive; for their merits will live in the memory of posterity, to whom the influence of envy will not reach.

22. Yet, after so many great writers, I shall not hesitate to advance, on certain points, my own opinions; for I have not attached myself to any particular sect, as if I were affected with any spirit of superstition; and, as I bring together the observations of many authors, liberty must be allowed my readers to choose from them what they please; being myself content, wherever there is no room for showing ability, to deserve the praise due to carefulness.

CHAPTER II.

Of the origin of oratory, § 1, 2. Nature and art, 3. Objection to Cicero's notion, 4.

1. THE question, *what is the origin of oratory*, need not detain us long; for who can doubt that men, as soon as they were produced, received language from *nature* herself, the parent of all things, (which was at least the commencement of oratory,) and that *utility* brought improvement to it, and *method* and *exercise* perfection? 2. Nor do I see why some should think that accuracy in speaking had its rise from the circumstance that those, who were brought into any danger by accusation, set themselves to speak with more than ordinary care for the purpose of defending themselves.* This, even if a more honourable cause is not necessarily the first; especially as accusation goes before defence; unless any person would say that a sword was forged by one who prepared steel for his own defence earlier than by one who designed it for the destruction of another.

It was therefore *nature* that gave origin to speech; and *observation* that gave origin to art; for as, in regard to medi

* I have not found in any writer an express assertion to this effect. *Spalding.*

cine, when people saw that some things were wholesome and others unwholesome, they established an art by observing their different properties, so, with respect to speaking, when they found some things useful and others useless, they marked them for imitation or avoidance; other people added other things to the list according to their nature; these observations were confirmed by experience; and every one then taught what he knew. 4. Cicero,* indeed, has attributed the origin of eloquence to founders of cities and to legislators; in whom there certainly must have been some power of speaking; but why he should regard this as the very origin of oratory, I do not see; as there are nations at this day without any fixed settlements, without cities, and without laws, and yet men who are born among them discharge the duties of ambassadors, make accusations and defences, and think that one person speaks better than another.

CHAPTER III

Divisions of the art of Oratory, § 1—3. Various opinions respecting them, 4, 5. Cicero's not always the same, 6, 7. Opinions of some Greek writers, 8, 9. Of the order of the division or parts, 10. Whether they should be called parts, or works, or elements, 11.

1. THE whole *art of oratory*, as the most and greatest writers have taught, consists of five parts, *invention*, *arrangement*, *expression*, *memory*, and *delivery* or *action*; for the last is designated by either of these terms. But every speech, by which any purpose is expressed, must of necessity consist of both *matter* and *words*; 2. and, if it is short, and included in one sentence, it may perhaps call for no further consideration; but a speech of greater length requires attention to a greater number of particulars; for it is not only of consequence what we say, and how we say it, but also where we say it; there is need therefore also for *arrangement*. But we cannot say everything that our subject demands, nor everything in its proper place, without the assistance of *memory*, which will accordingly constitute a fourth part. 3. And a *delivery* which is unbecoming either as to voice or gesture, vitiates, and

* De Orat. i. 8.

almost renders ineffectual, all those other requisites o eloquence; and to delivery therefore must necessarily be assigned the fifth place.

4. Nor are some writers, among whom is Albutius,* to be be regarded, who admit only the first three parts, because *memory*, they say, and *delivery*, (on which we shall give directions in the proper place,†) come from nature, not from art. Thracymachus,‡ however, was of the same opinion as far as concerns *delivery*. 5. To these some have added a sixth part, by subjoining *judgment* to invention, as it is our first business *to invent*, and then *to judge*. For my part, I do not consider that he who has not judged has invented; for a person is not said to have *invented* contradictory or foolish arguments, or such as are of equal value to himself and his adversary, but *not to have avoided* them. 6. Cicero, indeed, in his *Rhetorica*,§ has included judgment under invention; but, to me, judgment appears to be so mingled with the first three parts (for there can neither be *arrangement* nor *expression* without it), that I think even delivery greatly indebted to it. 7. This I would the more boldly affirm, as Cicero, in his *Partitiones Oratoriæ*,‖ arrives at the same five divisions of which I have just spoken; for, after first dividing oratory into two parts, *invention* and *expression*, he has put matter and arrangement under invention, and words and delivery under expression, and has then made memory a fifth part, having a common influence on all the rest, and being, as it were, the guardian of them. He also says, in his books *de Oratore*,¶ that eloquence consists of five divisions; and the opinions expressed in these

* Albutius Novariensis came to Rome in the reign of Augustus, and was received into the friendship of Plancus. He opened a school at Rome, and taught rhetoric. Seneca mentions him in his Declamations and Controversies. *Turnebus.*

† B. xi. c. 2 and 3.

‡ Compare iii. 1, 10. He might have said this in the τέχνη ῥητορική which Suidas attributes to him. There was more than one book of his extant, as appears from Cicero Orat. c. 52. *Spalding.*

§ The books *De Inventione.* The particular passage, however, to which Quintilian refers, is not to be found in what is now extant of them.

‖ C. i. sect. 3.

¶ The text has *in Oratore*, but, as Gesner has observed, there is no passage to that effect in the *Orator.* The division into five parts will be found in the De Oratore, i. 31.

books, as they were written at a later period, may be regarded as more settled.

8. Those authors appear to me to have been not less desirous* to introduce something new, who have added *order* after having previously specified arrangement,† as if arrangement were anything else than the disposition of things in the best possible order. Dion‡ has specified only invention and arrangement, but has made each of them of two kinds, relating to matter and to words; so that expression may be included under invention, and delivery under arrangement; to which parts a fifth, memory, must be added. The followers of Theodorus, for the most part, distinguish invention into two sorts, referring to *matter* and *expression;* and then add the three other parts. 9. Hermagoras puts judgment, division order, and whatever relates to expression, under *economy*, which, being a Greek term, taken from the care of domestic affairs, and used in reference to this subject metaphorically, has no Latin equivalent.

10. There is also a question about the following point, namely, that, in settling the order of the parts, some have put *memory* after *invention*, some after *arrangement*. To me the fourth place seems most suitable for it; for we must not only retain in mind what we have imagined, in order to arrange it, and what we have arranged in order to express it, but we must also commit to memory what we have comprised in words; since it is in the memory that everything that enters into the composition of a speech is deposited.

11. There have been also many writers inclined to think that these divisions should not be called parts of the art of oratory but *duties* of the orator, as it is the business of the orator to invent, arrange, express, *et cetera*. 12. But if we coincide in this opinion, we shall leave nothing to art; for to speak well is the *duty* of the orator, yet skill in speaking well constitutes the *art* of oratory; or, as others express their notions, it is the duty of the orator to persuade, yet the power of persuading lies in his art. Thus *to invent* arguments and

* Not less than those who are mentioned in sect. 5 as having introduced a sixth part.

† *Dispositio.*

‡ Supposed by Turnebus and Spalding to be Dion Chrysostom.

arrange them are the duties of the orator; yet *invention* and *arrangement* may be thought peculiar parts of the art of oratory.

13. It is a point, too, about which many have disputed, whether these are *parts of the art of oratory* or *works* of it, or (as Athenæus* thinks) *elements* of it, which the Greeks call στοιχεῖα. But no one can properly call them *elements;* for in that case they will be merely first principles, as water, or fire, or matter, or indivisible atoms, are called the elements of the world; nor can they justly be named *works*, as they are not performed by others, but perform something themselves. 14. They are therefore *parts;* for as oratory consists of them, and as a whole consists of parts, it is impossible that those things of which the whole is composed can be anything else but parts of that whole. Those who have called them *works*, appear to me to have been moved by this consideration, that they did not like, in making the other division of oratory, to adopt the same term; for the *parts* of oratory, they said, were the *panegyrical*, the *deliberative*, and the *judicial*. 15. But if these are parts, they are parts of the matter rather than the art; for in each of them is included the whole of oratory; since no one of them can dispense with invention, arrangement, expression, memory, and delivery. Some, therefore, have thought it better to say that there are *three kinds* of oratory; but those whom Cicero† has followed have given the most reasonable opinion, namely, that there are *three kinds of subjects for oratory*.

CHAPTER IV.

Whether there are three sorts of oratory, or more, § 1—3. Quintilian adheres to the old opinion that there are but three; his reasons, 4—8. Opinions of Anaximenes, Plato, Isocrates, 9—11. Quintilian's own method, 12—15. He does not assign particular subjects to each kind, 16.

1. But it is a question whether there are three or more. Certainly almost all writers, at least those of the highest authority among the ancients, have acquiesced in this tripartite distinction, following the opinion of Aristotle, who merely calls

* II. 15, 23. † De Orat. i. 31; Top. c. 24.

the deliberative by another name, *concionalis*,* "suitable for addresses to public assemblies." 2. But a feeble attempt was made at that time by some of the Greek writers, an attempt which has since been noticed by Cicero in his books *De Oratore*,† and is now almost forced upon us by the greatest author‡ of our own day, to make it appear that there are not only more kinds, but kinds almost innumerable. 3. Indeed, if we distinguish *praising* and *blaming* in the third part of oratory, in what kind of oratory shall we be said to employ ourselves when we *complain*, *console*, *appease*, *excite*, *alarm*, *encourage*, *direct*, *explain obscure expressions*, *narrate*, *entreat*, *offer thanks*, *congratulate*, *reproach*, *attack*, *describe*, *command*, *retract*, *express wishes or opinions*, and speak in a thousand other ways? 4. So that if I adhere to the opinion of the ancients, I must, as it were, ask pardon for doing so, and must inquire by what considerations they were induced to confine a subject of such extent and variety within such narrow limits? 5. Those who say that the ancients were in error, suppose that they were led into it by the circumstance that they saw in their time orators exerting themselves for the most part in these three kinds only; for *laudatory* and *vituperative* speeches were then written; it was customary to pronounce funeral orations; and a vast deal of labour was bestowed on *deliberative* and *judicial* eloquence; so that the writers of books on the art included in them the kinds of eloquence most in use as the only kinds. 6. But those who defend the ancients, make three sorts of *hearers*; one, who assemble only to be gratified; a second, to listen to counsel; and a third, to form a judgment on the points in debate. For myself, while I am searching for all sorts of arguments in support of these various opinions, it occurs to me that we might make only two kinds of oratory, on this consideration, that all the business of an orator lies in causes either *judicial* or *extrajudicial*. 7. Of matters in which decision is sought from the opinion of a judge, the nature is self-evident; those which are not referred to a judge, have respect either to the past or to the future; the past we either praise or blame; and about the future we deliberate. 8. We may

* Δημηγορικόν. Arist. Rhet. i. 1, 10; iii. 14, 11.

† II. 10.

‡ Turnebus and Spalding suppose that Pliny the Elder is meant. See c. i. sect. 21. All the other commentators are silent.

also add, that all subjects on which an orator has to speak are either certain or doubtful; the certain he praises or blames, according to the opinion which he forms of them; of the doubtful, some are left free for ourselves to choose how to decide on them, and concerning these there must be deliberation; some are left to the judgment of others, and concerning these there must be litigation.

9. Anaximenes admitted only the general divisions of *judicial* and *deliberative*, but said that there were seven species; those, namely, of *exhorting* and *dissuading*, of *praising* and *blaming*, of *accusing* and *defending*, and of *examining*, which he calls the *exetastic* sort; but it is easy to see that the first two of these species belong to the *deliberative* kind of oratory, the two following to the *epideictic*, and the last three to the *judicial*. 10. I pass over Protagoras, who thinks that the only parts of oratory are those of *interrogating*, *replying*, *commanding*, and *intreating*, which he calls εὐχωλή. Plato, in his Sophistes,* has added to the *judicial* and *deliberative* a third kind which he calls προσομιλητικόν, and which we may allow ourselves to call the *sermocinatory* sort, which is distinct from the oratory of the forum, and suited to private discussions, and of which the nature is the same as that of dialectics or logic 11. Isocrates† thought that *praise* and *blame* have a place in every kind of oratory.

To me it has appeared safest to follow the majority of writers; and so reason seems to direct. 12. There is, then, as I said, one kind of oratory in which praise and blame are included, but which is called, from the better part of its office, the *panegyrical*; others, however, term it the *demonstrative* or *epideictic*. (Both names are thought to be derived from the Greeks, who apply to those kinds the epithets ἐγκωμιαστικὸν and ἐπιδεικτικόν. 13. But the word ἐπιδεικτικὸν seems to me to have the signification, not so much of *demonstration* as of *ostentation*, and to differ very much from the term ἐγκωμιαστικόν; for though it includes in it the laudatory kind of oratory, it does not consist in that kind alone. 14. Would any one deny that *panegyrical* speeches are of the *epideictic* kind? Yet they take the *suasory* form, and generally speak of the interests of Greece. So that there are, indeed, three kinds of oratory;

* Ed. Steph. p. 222.

† See ii. 15. 4.

but in each of them part is devoted to the *subject-matter*, and part to *display*. But perhaps our countrymen, when they call a particular kind *demonstrative*, do not borrow the name from the Greeks, but are simply led by the consideration that praise and blame *demonstrate* what the exact nature of anything is.) 15. The second kind is the *deliberative*, and the third the *judicial*. Other species will fall under these *genera*, nor will there be found any one species in which we shall not have either *to praise* or *to blame*, *to persuade* or *to dissuade*, *to enforce* a charge or *to repel* one; while to *conciliate*, to *state facts*, to *inform*, to *exaggerate*, to *extenuate*, and to *influence the judgment of the audience* by exciting or allaying the passions, are common to every sort of oratory.

16. I could not agree even with those, who, adopting, as I think, a division rather easy and specious than true, consider that the matter of panegyrical eloquence concerns what is *honourable*, that of deliberative what is *expedient*, and that of judicial what is *just*; for all are supported, to a certain extent, by aid one from another; since in panegyric *justice* and *expediency* are considered, and in deliberations *honour*; and you will rarely find a judicial pleading into some part of which something of what I have just mentioned does not enter.

CHAPTER V.

Division into things and words: other divisions, § 1–3. Questions concerning what is written and what is not written, 4. Definite and indefinite questions, 5—7. Species of indefinite ones, 8—11. Questions on general subjects not useless, 12—16. Definition of a cause, 17, 18.

1. But every speech consists at once of that which is expressed, and of that which expresses, that is, of *matter* and *words*. Ability in speaking is produced by *nature*, *art*, and *practice*; to which some add a fourth requisite, namely *imitation*; which I include under art. 2. There are also three objects which an orator must accomplish, to *inform*, to *move*, to *please*; for this is a clearer partition than that of those who divide the whole of oratory into what concerns *things* and *passions*; since both these will not always find a place in the subjects

of which we shall have to treat. Some subjects are altogether unconnected with the pathetic, which, though it cannot make room for itself everywhere, yet, wherever it forces an entrance, produces a most powerful effect.

3. The most eminent authors are of opinion that there are some things in pleading that require proof, and others that do not require it; and I agree with them. Some, however, as Celsus, think that an orator will not speak on any subject unless there be some question about it; but the majority of authors, as well as the general division of oratory into three kinds, are opposed to him; unless we say that to praise what is acknowledged to be honourable, and to blame what is admitted to be dishonourable, is no part of an orator's business.

4. All writers admit, however, that questions depend on what *is written* or what is *not written*. Questions about something written concern *legality;* those about something not written concern *fact*. Hermagoras, and those who follow him, call the former kind *legal* questions, the latter *rational* questions, using the terms νομικὸν and λογικόν. 5. Those who make all questions relate to *things* and *words* are of the same opinion.

It is also agreed that questions are either *indefinite* or *definite*. The indefinite are those which, without regard to persons, time, place, and other such circumstances, are argued *for* or *against*. This sort of questions the Greeks call θέσεις: Cicero * *propositions;* others *general questions relating to civil affairs;* others *questions suitable for philosophical discussion;* while Athenæus makes them *parts of the cause* to be decided. 6. Cicero † distinguishes them into questions relating to *knowledge* and to *action;* so that "Is the world governed by divine providence?" will be a question of *knowledge*, "Ought we to take part in the management of public affairs?" a question of *action*. The former kind he subdivides into three species, "whether a thing is," "what it is," and "of what nature it is;" for all these points may be unknown; the latter kind into two, "how we should obtain the thing in question," and "how we should use it."

7. Definite questions embrace particular *circumstances*, *persons*, *times*, and other things; they are called by the Greeks ὑποθέσεις: by our countrymen, *causes*. In these the whole

* See. ii. 1, 9.

† Topic. c. 21; Partit. Orat. c. 18.

inquiry seems to be about things and persons. 8. The *indefinite* is always the more comprehensive; for from it comes the *definite*. To make this plainer by an example, the question "whether a man should marry"* is indefinite; the question "whether Cato should marry" is definite, and may accordingly become the subject of a suasory speech. But even those which have no allusion to particular persons are generally referred to something; for "ought we to take a share in the government of our country?" is an abstract question, but "ought we to take a share in the government of it under a tyranny?" has reference to something definite. 9. Yet here also there lies concealed, as it were, a person; for the word *tyranny* doubles the question, and there is a tacit consideration of *time* and *quality;* yet you cannot properly call the question a *cause*.

Those questions which I call *indefinite* are also called *general;* and, if this be a proper term, *definite* questions will also be *special*. But in every special question is included the general, as being antecedent. 10. In judicial causes, too, I know not whether whatever comes under the question of *quality* is not general: Milo *killed* Clodius: *He was in the right to kill a lier-in-wait:* does not this question arise, *Whether it be right to kill a lier-in-wait?* In *conjectural* matters, also, are not these questions general,† *was hatred, or covetousness, the cause of the crime? Ought we to trust to evidence extracted by torture? Ought greater credit to be given to witnesses or to arguments?* As to *definitions*, it is certain that everything comprehended in them is expressed generally.

11. Some think that those questions which are limited to particular persons and causes may sometimes be called *theses*, if only put in a different way; so that, when *Orestes is accused*, it is a cause, but when it is inquired *whether Orestes was justly acquitted*, it is a thesis; of which sort also is the question *whether Cato was right in giving Marcia to Hortensius?* These writers distinguish a *thesis* from a *cause* by

* II. 4, 24, 25.

† The principal question and *status* in conjectural causes, or those concerning matters of fact, can scarcely contain anything general, but the particular arguments, which are brought to support it, are commonly treated θετικῶς, like *theses*, or general questions. *Turnebus.*

saying that a thesis has respect to what is *theoretical*, a cause to what is *actually done;* since, in regard to a thesis we dispute only with a view to abstract truth, in a cause we consider some particular act.

12. Some, however, think that the consideration of general questions is useless to an orator, as it is of no profit for it to be proved, they say, that *we ought to marry*, or that *we should take part in the government of the state*, if we are hindered from doing so by age or ill-health. But we cannot make the same objection to all questions of the kind; as, for example, to these: *whether virtue is the chief good*, and *whether the world is governed by divine providence.* 13. Moreover, in inquiries that relate to an individual, though it is not enough to consider the general question, yet we cannot arrive at the decision of the particular point without discussing the general question first. For how will Cato consider *whether he himself ought to marry*, unless it be first settled *whether men ought to marry at all*? Or how will it be inquired *whether Cato ought to marry Marcia*, if it be not previously decided *whether Cato ought to take a wife?* 14. Yet there are books in circulation under the name of Hermagoras, which support the opinion that I am opposing; whether it be that the title is fictitious, or whether it were another Hermagoras that wrote them; for how can they be the productions of the same Hermagoras who wrote so much and so admirably on this art, when, as is evident, even from Cicero's first book on rhetoric,* he divided the subject-matter of oratory into *theses* and *causes*? a division which Cicero himself condemns, contending that the *thesis* is no concern of the orator's, and referring this kind of question wholly to the philosophers. 15 But Cicero has relieved me from all shame at differing with him, as he not only censures† those books himself, but also, in his *Orator*,‡ in the books which he wrote *De Oratore*,§ and in his *Topica*,‖ directs us to abstract the discussion from particular persons and occasions, *because we can speak more fully on what is general than what is special, and because whatever is proved uni-*

* De Invent. i. 6. Compare Quint. ii. 21, 21.
† See Quint. ii. 15, 6.
‡ C. 14.
§ III. 30.
‖ C. 21.

versally, must also be proved particularly. 16. As to the *state* of the question, it is the same with regard to every kind of thesis as with regard to causes. To this is added that there are some questions that concern matters absolutely, and others that refer to something particular; of the former kind is *whether a man ought to marry;* of the latter, *whether an old man ought to marry;* of the former kind, is *whether a man be brave;* of the latter, *whether he be braver than another man.*

17. Apollodorus, to adopt the translation of his disciple Valgius,* defines a *cause* thus: *The cause is the matter having regard in all its parts to the question;* or, *the cause is the matter of which the question is the object.* He then gives this definition of the *matter*: *The matter is the combination of persons, places, times, motives, means, incidents, acts, instruments, sayings, things written and not written.* 18. For my part, I here understand by the *cause* what the Greeks call ὑπόθεσις, by the *matter* what they term περίστασις. But some writers have defined the *cause* itself in the same way as Apollodorus defines the *matter.* Isocrates says that a cause is *a definite question relating to civil affairs,* or *a disputed point between a definite number of persons.* Cicero† speaks of it in these words: *A cause is determined by reference to certain persons, places, times, actions, and events, depending for decision either on all or the majority of them.*

* See iii. 1, 13.
† Topic. c. 21, init.

CHAPTER VI.

Of the *status* or *state* of a cause, § 1—4. What it is, 5—12. From whom the *state* proceeds, the accuser or defendant, 13—21. How many *states* there are; the ten categories of Aristotle, 22—24. Others make nine, others seven, 25—28. As to the number of *states*, some make one only, 29, 30. Others two, as Archidemus, Pamphilus, Apollodorus, Theodorus, Posidonius, Cornelius Celsus, 31—38. Another mode of making two *states*, 40—43. Most authors make three, as Cicero, Patrocles, Marcus Antonius, Virginius, 44—46. Athenæus, Cæcilius, and Theon make four, 45—48. The quadripartite methods of Aristotle and Cicero, 49, 50. Some have made five, six, seven, eight *states*, 51—54. Distinction of *status rationales, quæstiones legales*, 55—57. Cicero speaks of a *status negotialis*, 58, 59. Hermagoras first introduced *exception*, 60. Legal questions; Albutius, 61, 62. Quintilian departs in some degree from the method which he formerly adopted, 63—67. His opinion of *exception;* remarks upon it, 68—79. In every cause there are three points to be ascertained, 80—82. A fourfold division, useful to learners, 83—85. These four points included under two *genera*, the *rationale* and the *legale*, 86, 87. Resemblances in the *genus legale* spring from the three points above-mentioned, 88—90. In every simple cause there is but one *state*, 91—93. In complex causes there are several *states*, either of the same or of different kinds; examples, 94—104.

1. Since every cause, therefore, is comprehended in some *state*,* I think that before I proceed to specify how the several kinds of causes are to be managed, I must consider that question which has reference to all of them alike, *what is a state?* as well as *whence it is drawn*,† and *how many* and *what kinds* of *states* there are? Some have been of opinion, however, that all these questions concern only judicial matters; but, when I

* I was very much in doubt, for some time, what English word I should adopt for *status*, or στάσις, but being able to find no English word exactly equivalent to it, I thought it best, on the whole, to take the derivative from it, *state*, which, whenever it is used for *status* in this chapter, I shall print in italics. The exact meaning of it the learner will perhaps best understand from sect. 6, where it is said to be, not the question itself, but the *genus quæstionis*, or "nature of the question." See also sections 9, and 73—76. The "*status*," says Turnebus, "is that *in quo stet nitaturque causa quasi cardine aliquo*." The English words "ground" or "position" would express it in many cases, but not satisfactorily in all. Gedoyn was obliged to take the French word *état*.

† Whether from the accuser or defendant. See sect. 13—22.

have treated of all the three kinds of oratory, the result will make their ignorance apparent. 2. What I call the *state*, some term the *settlement*;* others the *question*; others *that which appears from the question*; and Theodorus styles it the *general head*, κεφάλαιον γενικώτατον, to which everything else is referred. But though the names are different, the meaning is the same; nor is it of any consequence to learners by what term anything is distinguished, so that the thing itself be clear. 3. The Greeks call the state στάσις: a name which they think was not first given it by Hermagoras, but, as some suppose, by Naucratis,† a disciple of Isocrates, or, as others imagine, by Zopyrus ‡ of Clazomenæ; though even Æschines appears to use the term in his oration against Ctesiphon § when he intreats the judges not to allow Demosthenes to wander from the subject, but to oblige him to speak directly to the *state of the case*. 4. The name is said to be derived either from the fact that in it lies the commencement of controversy in the cause, or that the cause rests on it.

Such is the origin of its name; let us now consider *what it is*. Some have defined the *state* to be the *first conflict of questions*, who, I think, have conceived rightly, but have not expressed themselves with sufficient judgment. 5. For the *state* is not the first conflict; *You have done, I have not done*, but that which results from the first conflict, that is, the nature of the question, *you have done; I have not done; has he done? You have done this; I have not done this; what has he done?* But as it appears from these examples, that the first sort of question depends on conjecture, the other on definition, and as it is on these points that each side will insist, the question will be one either of a *conjectural* or of *definitive state*. 6. Supposing a person should say, *sound is the concussion of two bodies*, he would be in the wrong, I

* *Constitutionem.*] This term is used by Cicero de Inv. i. 8; Script. ad Herenn. i. 11. Who used the other terms, I have not discovered *Spalding.*

† See Dionys. Halicarn. in Arte, 39, vol. ii. Cicero de Orat. ii. 23; iii. 44; Orat. c. 51. "His funeral orations, especially those on Mausolus, king of Caria, are mentioned by some writers." *Spalding.* See Suidas v. Isocrates and Theodectes, and A. Gellius, x. 68.

‡ Diog. Laert ix. 114.

§ Ed. Steph. p. 83; where, however, τάξις is now found instead of στάσις.

think; for the sound is not the concussion, but the result of the concussion. This is a mistake, however, of but trifling consequence; for the meaning is understood in whatever way it be expressed; but in regard to oratory, an error of vast importance has arisen among students who have imperfectly understood their authors, and who, as they read the words *first conflict*, thought that the *state* was always to be taken from the first question; a supposition which is altogether unfounded. 7. For there is no question that has not its *state;* since there is none that is not founded on assertion and denial; but some questions form an integral part of causes, and on these a decision must be pronounced; while others are introduced *from without*, contributing something, however, like auxiliaries, to the general strength of the cause; and it then happens that there are said to be several questions in the same suit. 8. Of these the least important often occupies the first place; for it is a common artifice among us to abandon those points in which we have least trust, after they have been dwelt upon, sometimes conceding them as it were, of our own accord, to the opposite side, and sometimes contenting ourselves with making an ascent from them to stronger grounds of argument.

9. A simple cause, though it may be defended in various ways, cannot contain more than one point on which a decision is to be pronounced; and hence the *state of the cause* will be that which the pleader regards as the chief object to be gained, and the judge as the chief object of attention; for it is on this that the cause will *take its stand.* 10. But of questions there may be different *states;** since, to make this plain by a very short example, when the accused says, *Even if I did it, I was right in doing it*, he makes the *state* that of *quality;* but when he adds, *but I did not do it*, he makes it that of *conjecture.* But the defence, *I have not done it*, is always the stronger; and therefore I shall consider the *state* as lying in that argument which I should use if I were not allowed to use more than one. 11. We therefore rightly say the first conflict of *causes*, not of *questions.* Cicero, in pleading for Rabirius Postumus, makes it his object, in the first part of his speech, to show that the charge could not be brought against a Roman knight;†

* Comp. sect. 21.

† The first part extends to the end of c. 7. Cicero maintains that

and, in the latter part, he asserts that no money came into his client's hands; but I should say that the *state* lies in that which is the stronger point. 12. Nor, in his speech for Milo, should I consider that the struggle in the cause* commences with those early questions which are introduced immediately after the exordium,† but where he proceeds to prove, with his whole strength, that Clodius was a lier-in-wait, and was therefore justly put to death. And that which an orator ought to settle in his mind before everything else, even though he purpose to offer many arguments in support of his cause, is what he would wish to be most apparent to the judge. But though this is the first thing to be considered, it does not follow that it will be the first to be stated.

13. Others have thought that the *state* is the first point of opposition offered by the party against whom you are pleading; an opinion which Cicero‡ expressed in the following words: *On which the defence first takes its stand, as if ready to grapple with the opponent to overthrow him.* Hence, again, rises another question, whether he who replies always determines the *state*. To this notion Cornelius Celsus is eminently opposed, saying the *state does not arise from him who denies, but from him who supports his own assertion;* as, for instance, if an accused person denies that a man has been killed, the *state* would come from the accuser, because he would proceed to prove what he had affirmed; if the accused should say that the man was lawfully killed, the *state* would come from him, and the affirmation be on his side, the burden of proof being transferred from one party to the other. 14. With that writer I do not agree; for what is said in contradiction to him is nearer the truth, that there is no point of dispute if the party with whom you are going to law makes no reply, and that accordingly the *state* proceeds from the respondent. 15. In my own opinion, however, the case happens sometimes one way and sometimes another, varying according to the nature of the cause; because the affirmation may be thought some-

by the Julian law *de repetundis* an action could not be brought against a Roman knight who had held no office. *Spalding.*

* *Conflixisse causam.*] Francius would read *constitisse.*

† All the manuscripts have *ante proœmium,* which Spalding retains in his text, but rightly condemns as absurd in his notes. Capperonier and many others read *post proœmium* with Aldus.

‡ Topic c. 25 *init.*

times to determine the *state*, as in conjectural causes; for it is rather the plaintiff that uses conjecture; (some, moved by this consideration, have said that the *state* proceeding from the defendant is a *negative state;*) and in a syllogism* the whole of the reasoning proceeds from him who affirms. 16. But because he who denies appears in those cases† also to lay upon the opposite party the necessity of determining the *state*, (for if he says, *I have not done the deed*, he will oblige his opponent to use conjecture, and if he says *My opponent has not the law on his side*, he will compel him to have recourse to the syllogism,) let us grant that the *state* proceeds from the defendant. Nevertheless, however, the matter will come to the same thing, that sometimes the plaintiff will determine the *state*, and sometimes the defendant. 17. For let this be the assertion of the accuser, *You have killed a man*, if the accused deny the charge, it is the accused that will determine the *state;* but if he admits the truth of it, but says that the man *was an adulterer*, and *was lawfully killed*, (and it is certain that there is a law which gives permission to kill an adulterer,) then, unless the accuser makes some reply, there will be no case. But if the accuser rejoins, *He was not an adulterer*, refutation then commences on the part of the accuser, and it is he that will determine the *state;* which will thus indeed have its origin in the first denial, but that denial will be made by the accuser, not by the accused. 18. It may happen, too, that the same question may make the same person either *accuser* or *accused;* for instance, the law says, "Let not him who has exercised the profession of an actor sit in the first fourteen rows of seats;" but a man who had appeared as an actor before the prætor in his garden, but had not exhibited himself on the public stage, seated himself

* A syllogism is a *status legalis*, in which we bring under the meaning of the written law something which is not actually included in the expressed letter of the law. It is so called because a syllogism is used, in which the law is given in the major proposition, and the minor the act to be brought under the signification of the law. *Turnebus.* Quintilian furnishes an example in b. vii. c. 9: if a man had killed his mother, his accuser might use the syllogism against him in this way: "The law says, that he who kills his father is to be sewn up in a sack, &c.; you have been guilty of an equally great crime by killing your mother; therefore, &c." *Capperonier.* See Hermogenes, περὶ στάσεων, p. 16; Cicero de Inv. i. 13; ii. 50; Script. ad Herenn. i. 13. *Spalding.*

† *Illic.*] In conjecturalibus causis et in syllogismo. *Spalding.*

on one of those fourteen rows;* 19. the charge then brought against him is, *You have exercised the profession of an actor*, the denial is, *I have not exercised it*, and the question, *What it is to exercise the profession of an actor?* If he be accused under the law respecting the theatre, the denial will proceed from the accused; but if he be expelled from the theatre, and demand reparation for unjust expulsion, the denial will be on the part of the accuser. 20. But that which is laid down by the majority of writers† will certainly be of more frequent occurrence.

Those have escaped these difficulties who have said that the *state* is that which results from the affirmation and the denial; as, *You have done the deed, I have not done it,* or *I was right in doing it.* 21. Let us consider, however, whether *that* is the *state*, or whether it is in *that* that the *state* lies. Hermagoras calls that the *state* from which the matter in question is understood, and to which also the proofs of each party are directed as their object. My own opinion has always been, as there are frequently different *states* of questions in a cause, to regard that as the *state of the cause* which is the strongest point in it, and on which the whole matter chiefly turns. If any one profess to call this the *general question*, or the *general head*, I shall not dispute with him on that point, (any more than if he should invent yet another name by which the same thing might be signified, although I know that many rhetoricians have devoted whole volumes to this discussion,) but I am satisfied to let it be called the *state*. 22. As there is the greatest dissension among writers, however, on all other matters, so, in regard to this, there appears to me to have been extraordinary eagerness to advance different opinions; insomuch that it is neither agreed what number of *states* there are, nor what are their names, nor which of them are general and which special.

23. Aristotle, first of all, specifies ten elements,‡ to which

* Which were assigned to the knights by the law of Lucius Otho Roscius. *Sic placuit vano, qui nos distinxit, Othoni.* Spalding observes that it would appear from Cicero, Philipp. ii. 18, that *infames* were excluded from those fourteen rows; and actors were *infames*.

† Namely, that the respondent makes the *status*. Compare sect. 13. *Spalding.*

‡ The ten categories or predicaments of Aristotle: *substance, quality, quantity, relation, place, time, doing, suffering, habit, position.*

every possible question appears to have some reference: *οὐσία*, which Flavius calls *essentia*,* (nor indeed is there any other Latin word for it,) and to which belongs the question "whether a thing is;" *quality*, of which the signification is plain enough; *quantity*, of which a twofold distinction has been made by later writers, in reference to the questions "how great?" and "how many?"† *relation to something*, whence are drawn considerations concerning "exception"‡ and "comparison;"§ 24. next come *where* and *when;* then *doing*, *suffering*, *condition*, which has regard to a person's "being armed" or "clothed;" and last of all *κεῖσθαι*, *position*, which is a comprehensive sort of category, having reference to "sitting," "standing," "lying." But of all these, the first four only appear to concern the *states* of causes; the rest seem to concern only topics for argument. 25. Others‖ have specified nine elements: *person*, in respect to which inquiry is made concerning the mind, the body, and external circumstances; an element which, I see, refers to the means of establishing *conjecture* and *quality; time*, which the Greeks call *χρόνος*, in regard to which arises, for example, the question "whether he whom his mother brought forth when she was given up to her creditors was born a slave?"¶ *place*, in connection with which

* See ii. 14, 2.

† *Quàm magnum et quàm multum.*] The first denoting *magnitude*, of which the parts are connected; the second *multitude*, of which the parts are unconnected. *Turnebus.*

‡ *Translatio.*] As an equivalent for this word, I have adopted "exception," not because I am satisfied with it, but because I cannot find anything better. The Latins, besides *translatio*, called it *exceptio judicii declinatoria*, or sometimes *præscriptio*; the Greeks *μεταλῆψις* or *παραγραφή*. Gedoyn has rendered it *compétence*, the question being whether it is *competent* to a person who appears as an accuser, to bring an action against the person whom he accuses, (as in the accusation against Rabirius Postumus mentioned in sect. 11,) or to bring it at that particular time, or in that particular manner. See sect. 52, 69, and 84—86.

§ *Comparatio.*] *Comparatio* among rhetoricians is generally a species of *qualitas* or *status juridicialis*, in Greek *ἀντίστασις*, when the accused person confesses that he has been guilty of a crime, but attempts to show that the ill which he did was the cause of some greater good; Comp. vii. 4, 12 · Cicero de Invent. i. 11; ii. 24. *Spalding.*

‖ Who they are, I have not discovered. *Spalding.* This appears to have been the opinion of Theodorus, who calls *circumstances* elements, as we learn from Fortunatianus. *Turnebus.*

¶ *Dum addicta est mater.*] This question is settled by distinction; for *addicti* are not properly *servi*, but were said *esse in servitute*, or *pro servis*, not *servire servitutem*. See vii. 3, 26—28. v. 10, 60. *Burmann.*

arises such a question as "whether it was lawful to kill a tyrant in a temple," or "whether he who lay hid in his own house underwent his term of exile;"* 26. *time* in another sense, which the Greeks call καιρός, and which they would have to mean a portion of time in a more general sense, as summer, or winter; under this falls the question about "the reveller during a pestilence;"† *act*, or πρᾶξις, to which they refer the question "whether a man did a thing knowingly or unknowingly; from compulsion or by chance;" *number*, which may be regarded as a species of quantity, as "whether thirty rewards were due to Thrasybulus for having cut off thirty tyrants;" 27. *cause*, from which proceed many trials, as whenever a deed is not denied, but defended, as having been done with justice; τρόπος, or *manner*, when what the law allowed to be done in one way is said to have been done in another; hence arises the question about "the adulterer scourged or starved to death;"‡ and *opportunity for action*, which is too well understood to need any explanation or example; the Greek term however is ἀφορμαὶ ἔργων. 28. These writers, like Aristotle, think that no case can occur that does not connect itself with some of these *elements*. Some take away two of them, *number* and *opportunity*; and for what I called *act* substitute *things*, that is, πράγματα. These doctrines I have thought it sufficient just to notice, that I might not be supposed to have purposely omitted them. But I neither consider that *states* of causes are properly determined by these categories, nor that all topics for argument§ are included in them; and this will be apparent to those who read with attention what I am going to say on each of these heads; for there will be found to be many particulars that are not comprehended under these *elements*.

29. I have read in many authors that some rhetoricians are

* The question being whether his house could be called a *place* of exile.

† Quintilian, by saying *ille commissator*, intimates that the subject was well known, but I have found no allusion to it in any other writer on rhetoric. *Spalding.*

‡ The question is, whether the *mode* of punishment was lawful. That to kill an adulterer was permitted by law is agreed. Gesner cites Bynkershoek's Observat. Jur. Rom. v. 8, p. 142, ed. Genev. 1761, who says that it was lawful to scourge an adulterer, (referring to Val. Max. vi. 1, 13,) but not to starve him to death, which was not an infliction of sudden anger. *Spalding.*

§ *Locos.*] Se argumentorum, as in c. 24.

of opinion that there is in reality but *one state*, namely, the *conjectural;* but who the rhetoricians that held this opinion were, those authors have not told us, nor have I been able anywhere to discover. They are said, however, to have formed their notions on this ground, that our knowledge of everything is the result of indications.* But from similar reasoning they might say that the only *state* is that of quality, as a question may always arise about the quality or nature of anything about which we speak. 30. From either mode the greatest confusion will result; nor will it make any difference, indeed, whether we admit one kind of *state* only, or none at all, if all causes are of the same nature. *Conjecture* is derived from *conjicere*, "to throw together," that is, from making all our reasonings converge towards truth; whence also interpreters of dreams and omens are called *conjectores*, "conjecturers." But this sort of *state* has received various names, as will appear from what follows.

31. Some have made two kinds of *states*. Archidemus,† for instance, admitted the *conjectural* and the *definitive*, excluding that of *quality;* because he thought that we imagine about quality thus:‡ "What is unjust? what is iniquitous? what is it to be disobedient?" questions which he terms *de eodem et alio*,§ "about identity and difference." 32. With this opinion theirs is at variance who would make indeed two kinds of *state*, but one *negative*, and one *juridical;* the *negative* is the same as that which we call the *conjectural*, to which some have given the term *negative* absolutely, others partially, because they considered that the *accuser* employs *conjecture*, and the *accused*, *denial*. The *juridical* is that which in Greek is called δικαιολογικός, "treating of right." 33. But as *quality* is set aside by Archidemus, so by these writers is rejected *definition*, which they make dependent on

* *Signis.*] See b. v. c. 3. But perhaps *signa* is used in a rather wider sense here than there, where he distinguishes σημεῖα from τεμκήρια. *Spalding.*

† An eminent Stoic. Arrian. Epict. iii. 2. He is called *princeps dialecticorum* by Cicero, Quæst. Acad. iv. 57.

‡ He thought that we inquire about quality in such a way that we always have at least recourse to definition. *Spalding.*

§ Περὶ τοῦ αὐτοῦ καὶ τοῦ ἑτέρου, Aristotle, Topic. i. 5, where the question is about supporting or overthrowing a definition. *Capperonier.* See sect. 37, 49; vii. 3, 8; Cic. Topic. c. 22; Partit. Or. c. 19.

the juridical *state*, and think that we must imagine "whether it is right that what is charged against a person should be called sacrilege," for example, "or theft, or madness." 34. Of this opinion was Pamphilus,* but he distinguished quality into several kinds.

Many succeeding writers, altering only the names, have divided *states* of causes into two kinds by saying that they are either *about something that is doubtful*, or *about something that is certain;* for such indeed is the case; nor can it be otherwise than either *certain* that a thing has been done, or *uncertain;* if it is uncertain, the *state* is *conjectural;* if it is certain, there is room for *other kinds of states*. 35. Indeed, Apollodorus says the same thing, when he observes that the question lies either in *things external*,† by which conjecture is settled, or in *our own opinions;* calling the former sort of questions πραγματικόν, "practical," the latter περὶ ἐννοίας, "dependent on judgment." Those also say the same who make the two kinds of *state*, ἀπρόληπτον and προληπτικόν,‡ *dubious* and *presumptive*, the latter meaning *what is evident*. 36. Theodorus, too, expresses himself similarly, as he thinks that the question is either as to *whether a thing has happened*, or as to *particulars relating to what is admitted to have happened*, that is, περὶ οὐσίας καὶ συμβεβηκότων. For in all these distinctions the first kind of *state* belongs to conjecture, the second to other matters. But these other matters Apollodorus makes to be two, *quality* and *de nomine*, that is *definition;* Theodorus four, *existence*, *quality*, *quantity*, and *relation*. 37. There are some also who make the question *de eodem et alio*, "about identity and difference," belong sometimes to *quality* and sometimes to *definition*.

Posidonius, too, ranges *states* of causes under two heads, *words* and *things*. With respect to a word, he thinks that the

* Mentioned by Aristotle, Rhet. ii. 23. Whether he is the same that is mentioned by Quintilian xii. 10, 6, by Pliny in several places, and by Cicero, de Orat. iii. 21, is, says Spalding, very uncertain.

† As circumstances, indications, writings, evidence. In speaking of things lying in opinions, he means that it rests with the judges in causes to determine whether any particular thing is to be called just or unjust, &c. *Turnebus.*

‡ The first means that which we do not comprehend by any πρόληψις or conception of our own, and concerning which we are therefore in doubt, until it is established by facts or proofs; the latter, that which is settled in our minds, and consequently appears certain to us. *Spalding.*

questions are, "Whether it has any meaning? what? how many meanings? and how it has such meaning?" With respect to things, he notices *conjecture*, which he calls κατ' αἴσθησιν, "assumption from perception," *quality*, *definition*, κατ' ἔννοιαν, "rational induction," and *relation*. Hence also comes the distinction into *things written* and *unwritten*.* 38. Cornelius Celsus himself, too, makes two general *states:* "Whether a thing is," and "of what nature it is." Under the first he includes *definition*, because it is equally a question *whether a man* who denies that he has stolen *anything* from a temple, or who owns that he stole from it the money of a private individual, *is guilty of sacrilege*.† *Quality* he divides into *fact* and *what is written;* to *what is written* he assigns four legal questions,‡ setting aside *exception*;§ *quantity* and *intention*‖ he puts under conjecture.¶

39. There is also another method of division into two *states*, which tells us that a question must relate either to *substance* or to *quality;* and that quality is considered either in *its most general sense*, or with regard *to particulars*.** 40. To substance belongs *conjecture;* for inquiry may be made concerning any *thing* "whether it has been, is, or will be;" and

* Questions as to the written letter of the law are *quæstiones legales*. Questions as to other matters, not written, are decided by *conjecture, quality, and definition*. Turnebus.

† Because there is a denial, observes Turnebus, in both cases. In the first case the accused denies that he took anything at all from the the temple; in the second, he denies that he took anything belonging to the temple. See sect. 41 and 49. "This is an example much used by other writers on rhetoric as well as Quintilian; as by Hermogenes, by the writer ad Herenn. i. 12, and by Aristotle." *Spalding*.

‡ Concerning writing and the intention of the writer; ambiguity; contradictory laws; and the syllogism. *Capperonier*.

§ See sect. 23.

‖ *Mentis quæstionem*.] That is, *cùm quæritur quo animo fecerit*, when it is inquired with what intent a person did a thing. *Turnebus*. See vii. 2.

¶ That is, under the *status conjecturalis* or *quæstio de facto*. Capperonier.

** *Aut in summo genere consistere, aut in succedentibus*.] *Qualitas de summo genere*, or *infinita*, is when it is inquired what is the nature and form of anything in general; but such questions are chiefly confined to the philosophers, entering very rarely into legal discussions, though sometimes into deliberative addresses. *Turnebus*. *In succedentibus*, is "in *subalternis*, ut aiunt, *speciebus*, generi summo subjectis." *Capperonier*.

sometimes concerning the *intention* of it; and this method is better than their's who have named the conjectural *state* a *state* of *fact*, as if inquiry could be made only concerning the *past* and concerning *what has been done*. 41. As to the consideration of quality in its most general sense,* as "Whether that is honourable which is everywhere commended," it rarely occurs in judicial proceedings; but with reference to particulars, questions arise either about some common term, as "Whether he has committed sacrilege who has stolen a private person's money from a temple," or about a name given to some particular act, when it is certain that an act has been done, and there is no doubt what the act that has been done is. Under this head are included all questions about what is *honourable*, *just*, *expedient*. 42. In these *states*, too, are said to be comprehended others, because *quantity* is sometimes referred to *conjecture*, as in the question, "Is the sun greater than the earth?" and sometimes to *quality*, as when it is asked, "What degree of punishment or reward it is just that some particular individual should receive;" because, also, *exception* † has relation to quality, and definition is concerned with *exception*;‡ 43. and because, moreover, contradictory laws, and the ratiocinatory *state*,§ that is, the syllogism, and questions in general, regarding writings and the intention of the writer, depend on considerations of equity; (except that this last case sometimes admits of conjecture, as when we inquire *what the legislator meant*;) but ambiguity must necessarily be explained by conjecture, because, as it is plain that the words may be understood in two ways, the question is solely about the intention.

44. By a great number of writers there are recognised *three*‖ general states, a division which Cicero also adopts in his

* *Qualitatis de summo genere.*] See note on sect. 39; and vii. 4, 1.

† See sect. 38 and 11.

† As in the case of the person accused of sacrilege, sect. 38, who will say to his accuser, *translatione utens*, "you cannot proceed against me for sacrilege, but only for simple theft;" and then arises a question about the definition of sacrilege. *Capperonier.*

§ That *status legalis*, in which we endeavour to make a law apply to some case which is not included in the letter of it. See b. vii. c. 8. *Capperonier.* On the syllogism, see sect. 15.

‖ From sect. 31 he has been speaking of those who admit only two.

Orator,* expressing his opinion that everything that can become a subject of controversy or dispute† is comprehended in the questions *Whether it is, what it is,* and *of what particular nature it is;* the names‡ are too well known to make it necessary to mention them. Patrocles§ is of the same opinion. 45. Marcus Antonius‖ also made three *states*, as in the following words: "The questions from which all pleadings arise are but few: whether a thing has been done, or has not been done;¶ whether it is right or wrong;** whether it is good or bad."†† But since that which we are said to have done *rightly*, is understood in such a sense that we appear to have acted, not merely in conformity with the law, but in accordance with equity, those who have followed Antonius have been inclined to distinguish those *states* more exactly, and have in consequence called them the *conjectural*, the *legal*, and the *juridical;* a distinction which is approved by Virginius.‡‡ 46. Of these they then made several species, so as to put under the *legal* state *definition*, as well as other *states* which have their name from what is written; as that of *contradictory laws*, which is called *ἀντινομία*: that of *writing and meaning* or *intention*, that is, *κατὰ ῥητὸν καὶ διάνοιαν*: that of *μετάληψις*,§§ which we distinguish by different terms, as *translative*, *transsumptive*, *transpositive;* the *syllogism*,‖‖ which we call the *ratiocinatory* or *collective state;* and that of *ambiguity*, which is called in Greek *ἀμφιβολία*: all which I have enumerated,

* C. 15. See also De Orat. i. 31; ii. 24 and 26.

† *Omnia quæ in controversiam aut in contentionem veniant.*] By *controversia* is properly meant *genus orationis judiciale*, opposed to *suasoriæ*, as is evident from b. vii. c. 2, and from Cicero de Orat. ii. 24. . . . The word *contentio* probably alludes to the *philosophiæ contentiones*, which Cicero, de Orat. ii. 24 and 26, calls sometimes *disputationes*, and sometimes *disceptationes*. Capperonier.

‡ The first is the *status conjecturalis;* the second the *status definitivus;* and the third *qualitas*. Capperonier.

§ II. 15, 16.

‖ In that book, I suppose, which he left unfinished. See c. 1. sect. 19. *Turnebus.*

¶ *Status conjecturalis*, or *quæstio de facto*. Capperonier.

** *Status legalis*, or *de scripto*. Capperonier.

†† *Status qualitatis*. Capperonier.

‡‡ See c. i. sect. 19.

§§ See sect. 23.

‖‖ See sect. 15.

because they are called *states* by most writers, though some would prefer that they should be called *legal questions.*

47. Athenæus has made four *states*, the προτρεπτικὴ or παρορμητικὴ στάσις, that is, the *exhortative*, which belongs properly to the suasory; the συντελικὴ, by which it appears from what follows, rather than from the name itself, that the *conjectural* is signified; the ὑπαλλακτικὴ, (which is the *definitive*,) for it consists in a change of terms;* and the *juridical*, which he distinguishes by the same Greek name† as other writers. For there is, as I said,‡ great variation as to names. 48. There are some who think the ὑπαλλακτικὴ στάσις is the *exceptional*,§ looking to the notion of change contained in the name Others, as Cæcilius and Theon, have made the same number of *states*, but of a different kind: *Whether a thing is? what it is? of what species it is? how great it is?* 49. Aristotle in his Rhetoric‖ [divides the whole matter into three parts: *What is true, what is to be sought or avoided*, (which belongs to the deliberative department of oratory,) and the consideration *de eadem atque alio*, "about identity and difference;" but, by division, he arrives at such a conclusion that he] thinks we must examine, as to any thing, *whether it is, of what nature it is, how great it is*, and *of what parts it consists.*¶ In one place, however, he notices the force of definition, where he says that some charges are thus met: "I have taken, but I have not stolen; I struck, but I did nothing wrong." 50. Cicero also in his books of rhetoric** had enumerated four *states* regarding *fact*, *name*, *kind*, and *action;* so that *conjecture* should refer to fact, *definition* to name, *quality* to kind, and *right*

* Because the name, which is given to the charge by the accuser, is changed by the defendant, and another put in its place; as, "I grant that it is theft; I deny that it is sacrilege." *Turnebus.*

† Δικαιολογική.

‡ C. 22.

§ Because, in *exceptions*, we change either the judge, or the prosecutor, or the time, or the mode of proceeding: ὑπαλλάττειν, "to change." *Turnebus.*

‖ Spalding observes that is scarcely possible to find any passage in Aristotle's Rhetoric to which Quintilian can be thought to refer. He then proposes to omit the original of the words which I have included in brackets, and refers for what follows to Arist. Rhet. iii. 17, 1, and i. 13, 9.

¶ *Quàm multum.*] Quantitas discreta. *Capperonier.* See sect. 23.

** De Inv. i. 8.

to action. Under *right* he had included *exception*. But in another place* he treats legal questions† as species of actions.‡

51. Some writers on rhetoric have made five *states*, those of *conjecture*, *definition*, *quality*, *quantity*, and *relation*. Theodorus also, as I remarked,§ adopts the same number of general heads, *whether a thing is*, *what it is*, *of what species it is*, *how great it is*, and *to what it has reference*. The last he regards as having most concern with comparison, since better and worse, greater and less, are terms that have no meaning unless they refer to something. 52. But relation, as I observed before,‖ affects questions of legal right, such as, "Has this man a right to go to law?" or "Is it fit that such a person should do such a thing?" or "May he proceed against a particular person," or "at a particular time," or "in a particular manner?" for all such inquiries must have reference to something.

53. Others think that there are six *states: conjecture*, which they call γένεσις:¶ *quality*, *peculiarity*, that is, ἰδιότης a term in which *definition* is implied; *quantity*, which they call ἀξία;** *comparison; exception*, for which, also, a new name, μετάστασις, has been found; new, I mean, as applied to *state*, for it had been previously used by Hermagoras in a different way, to denote one of the various sorts of juridical questions.

54. Others have been of opinion that there are seven; by whom neither *exception*, nor *quantity*, nor *comparison* were admitted; but, in the place of those three, were substituted four†† sorts of legal questions, and added to the three‡‡ *states* to be determined by reasoning.

55. Others have gone so far as to make eight, adding *exception* to the other seven.

* Partit. Orat. c. 31 and 38.

† Those noticed in sect. 46.

‡ *Species actionis.*] *Actionem* paullo latius accipimus, ut jus agendi significet et legis *actionem*. Turnebus.

§ Sect. 36.

‖ See sect. 23. We must read *incidit*, not *incidunt*, as Capperonier and Spalding observe.

¶ Because the question in it is respecting the origin or cause; as whether a thing was done, and by whom. *Turnebus.*

** Because it relates to quantity to show the *worthiness* or *unworthiness*, the sufficiency or insufficiency, of a thing. *Turnebus.*

†† The four mentioned in sect. 46: *scripti et voluntatis; ambiguity; legum contrariarum; syllogism.*

‡‡ Conjecture; definition; quality.

By some writers another distinction has been introduced, that of giving the name of "states" only to the *status rationales*, and calling the *status legales*, as I said* before, "questions;" as in the former the question is about *fact*, in the latter about *the written letter*. Others, on the contrary, have preferred that the *status legales* should be called "states," and the *status rationales* "questions." 56. But others have thought that there are only three *status rationales*, *whether a thing is*, *what it is*, and *of what kind it is;* Hermagoras is the only one who has made four, *conjecture*, *peculiarity*, *exception*, *quality*, to which latter he applies the expression, *κατὰ συμβεβηκότα*, "according to accidents,"† adding as an explanation, "whether it *happen* to a person to be good or bad.‡ 57. Quality he then distinguishes into four species, as relating *to things to be sought or avoided*, which fall under the *deliberative* department of oratory; *to persons*, to whom the *panegyrical* kind applies; *to things in general*, a department which he calls *πραγματική*, and in which the question is about things themselves, without any reference to persons, as "whether he is free who is under trial about his liberty;§ whether riches beget pride; whether a thing is just or good;" and *to judicial questions*, in which similar inquiries are made, but with regard to certain definite persons; as, "whether a certain person acted justly or well in a particular transaction?" 58. Nor am I ignorant that in the first book of Cicero‖ on Rhetoric there is another explanation of the part *relating to things in general*, as it is there said that "it is the department in which it is considered what is right according to civil usage and according to equity; a department with which lawyers are thought by us to be specially concerned." 59. But what the judgment of Cicero himself was respecting

* Sect. 46, *fin.*

† See Aquila Romanus, in Ruhnk. ed. Leips, p. 155: *status quem qualitatis aut ex accidenti appellant secundum Hermagoram.* Spalding.

‡ Regardant, sans doute, le vice et la vertu comme des qualités accidentelles. *Gedoyn's version.*

§ *Qui est in assertione.*] On which subject a law was made by Marcus Antoninus, as we learn from Lampridius, c. 9. *Pinus. Assertio* is a trial about the liberty of any person; as, when a free man was called to judgment with the object of making him a slave; *ut in servitutem asserereturr.* This was termed *causa liberalis.* Turnebus. The phrase *asserere in servitutem* occurs twice in Livy.

‖ De Inv. i. 11.

these books, I have already mentioned;* for into their pages were thrown the various portions of knowledge which he had brought from the school when a young man,† and if there is any fault in them, it is that of his instructor;‡ whether he was moved by the circumstance that Hermagoras places first under this head examples from questions of right, or by the consideration that the Greeks call interpreters of the law πραγματικοί. 60. Cicero, however, substituted for these books his excellent dialogues *de Oratore*, and, therefore, is not to be blamed as if he had delivered erroneous precepts.

I return to Hermagoras. He was the first of all rhetoricians that made *exception* a distinct *state*,§ though some advances towards it, but not under that name, are found in Aristotle.‖ 61. As to legal questions, he has specified these four: that which relates to *what is written and what is intended*, (which he designates by the phrase κατὰ ῥητὸν καὶ ὑπεξαίρεσιν, that is, "the expression and the exception," the former of which terms is common to him with all other writers, the latter, "exception," has been less used,) that which is *ratiocinatory* or *dependent on reasoning*, that of *ambiguity*, and that which concerns *contradictory laws*. 62. Albutius,¶ adopting the same division, withdraws *exception*, putting it under the *juridical* department. In legal questions also he thinks that there is no *state* which is properly called *ratiocinatory*.

I am aware that those who shall read the ancient writers

* C. v. sect. 15.

† *Sunt enim regestæ in hos commentarios, quos adolescens deduxerat, scholæ.*] Burmann observes that *scholæ*, if the text be correct, is to be taken in the sense of *disputationes*, but would rather read *Sunt enim velut res digestæ in hos commentarios, quos adolescens deduxerat schŏlâ*; which differs very little from the reading of Stephens's edition, adopted by Capperonier, *Sunt enim velut res regestæ in hos commentarios, quos adolescens deduxerat scholâ.* Compare Cic. Tusc. Quæst. i. 4, and Quint. ii. 11, 7.

‡ *Tradentis est.*] Who he was, we do not know. *Spalding*

§ Cic. De Inv. i. 11: *Hujus constitutionis* [translativæ] Hermagoras *inventor esse existimatur.*

‖ Capperonier refers to Rhet. ii. 15, 8.

¶ Albutius differs from Hermagoras, in removing *exception* from the *quæstiones rationales*, and putting it under the *quæstiones legales*, including it in *quality*; while from the *legales quæstiones* he excludes *ratiocinatio* as superfluous. This also Cicero appears to do in his De Orat. b. ii. and Part. Orat. *Turnebus.*

with attention will find still more *states;* but I am afraid that what I have said on this subject has exceeded due bounds.

63. For myself, I confess that I am now inclined towards an opinion somewhat different from that which I formerly held; and perhaps it would be safest for me, if I regarded only my own reputation, to make no change in that which for many years I have not only thought but have sanctioned with my approbation. 64. But I cannot endure to be guilty of dissimulation in any point on which I give judgment, especially in a work which I am composing with a view to being of some profit to well-disposed young men; for Hippocrates,* so celebrated in the art of medicine, is thought to have acted most honourably in acknowledging some mistakes that he had made, in order to prevent posterity from erring with him. Cicero,† too, did not hesitate to condemn some of his published works and others which he wrote afterwards, as his *Catullus* and *Lucullus*, and those books on Rhetoric to which I just now alluded. 65. For longer perseverance in study would be superfluous, if we were not at liberty to find out something better than what was advanced before. Nothing however of what I then taught was useless, for what I shall now teach will recur to the same principles, so that no one will repent of having learned from me. All I intend to do, is to re-produce the same materials, and to arrange them with somewhat better effect. But I wish every one to be satisfied that I communicate new light to others as soon as I have gained it myself.

66. According to the system of most authors, then, I adhered to three *ratiocinatory states*, those of *conjecture*, *quality*,

* Hippocrates, as he was dressing the wound of a man who had been struck with a stone on the head, found that he had been deceived with regard to the sutures of the skull, and confessed his mistake. This is mentioned to his honour by Celsus, viii. 4, who contrasts his noble-mindedness with the meanness of little men, who, *quia nihil habent, nihil sibi detrahunt.* See Hippoc. Epid. v. 14.

† See Cicero, Ep. ad Attic. xiii. 12, 13, 16, 19. Having at first composed the *Disputationes Academicæ* in two books, giving the first the title of Lucullus and the second that of Catullus, he afterwards produced another edition in four books, in which he made Varro the chief character. Of the second edition, only the first book has descended to us; of the first edition, the second book, entitled Lucullus, is extant. The rest is lost. *Spalding.*

and *definition*, and one *legal*.* These were my general *states*. The legal I divided into five species, those relating to *writing and intention*, *contradictory laws*, *induction*,† *ambiguity*, and *exception*. 67. I now see that the fourth‡ of the general *states* may be withdrawn from them; for the primary division is sufficient, by which I pronounced§ some *states* to be *ratiocinatory*, others *legal;* thus the fourth will not be a *state*, but a species of question; otherwise it would be a *ratiocinatory state*. 68. From those also, which I called species, I withdrew *exception;* having frequently indeed observed, (as all who listened to my instructions can remember,) and having asserted even in those lectures which were published without my consent‖ (but in which I however included this remark,) that the *state* of *exception* can scarcely be found in any cause so evidently that some other may not seem to be rightly named in that cause instead of it; and that in consequence that *state* had by some writers been wholly set aside. 69. Yet I am not ignorant that many cases are treated under this *state* of *exception*, as in almost all causes in which a person is said to have failed from irregularity in *for*¶, such questions as these arise: "Whether it was lawful for such a person to bring an action at all, or against some other particular person, or before some particular judge, or at some particular time," and whatever other similar questions may be asked. 70. But persons, times, suits, and other matters, are considered under the *state* of exception *for some pre-existent cause;* so that the question lies, not in the *state* of *exception* itself, but in the cause for which recourse is had of the *state* of *exception*. "You

* See c. v. sect. 4.

† *Collectivum* statum. The same as the *syllogismus*. Compare sect. 76.

‡ Quintilian justly blames his own division, for it was a division into three *species* and one *genus;* all the members of it were, therefore, not of the same order. *Capperonier*.

§ The *status legalis*.

‖ See the Proëm, c. 7.

¶ *Cecidisse formulâ*.] It was customary among the Romans, that if any one brought an action irregularly, or demanded anything more than he was justified in demanding, he lost his cause, and was said either *formulâ cadere* or *causâ cadere;* and thus in these cases they were obliged to have recourse to *exception*. Turnebus. See Torrent. ad Suet. Claud. c. 14. *Capperonier*. See sect. 52; and Cicero de Inv. i. 8.

ought not to seek restitution of this deposit before the prætor, but before the consuls; for the sum is too great to come under the cognizance of the prætor;" the question then is, "whether the sum *is* too great for the prætor's cognizance;" and this is a question as to fact. 71. "It is not lawful for you to proceed against me, for you could not become agent for the opposite party;" here the question for judgment is, "whether he could become agent." "You ought not to have proceeded by interdict, but to have made a demand;" the matter in doubt is, "whether the proceeding by interdict was right." 72. All these points come under the head of legal questions. Do not prescriptions,* also, (even those in which *exception* appears most manifest,) lead to the same sorts of questions as those laws under which the action is brought, so that the inquiry will be either about the *name* of an act,† about *what is written and the intent of the writer*, or about *something to be settled by argument.* The *state* then springs from the question; the *state* of exception does not embrace the point *for* which the pleader contends, but the question *because of* which he contends.‡ 73. This will be made plainer by an example: "You have killed a man; I have not killed him;" the *question* is "whether the accused did kill the man," the *state* is the *conjectural.*§ The following case is different: "I have a right to proceed against you; you have not;" when the *question* will be, "whether he *has* a right," and hence the *state;* for whether he be allowed to have a right or not, belongs to the event, not to the cause, and to that which the judge may decide, not to that because of which he may give such decision. 74. This is similar to it: "You deserve to be punished; I do not deserve to be punished;" the judge will see whether he *does* deserve to be punished; but here there will not be either *question* or *state;* where then? "You deserve to be punished, for you have killed a man; I have not killed a man:" here then is a question "whether he *did* kill a man?" "I ought to be honoured; you ought not;" is there here any *state*? I think not. "I ought to be honoured, for I have killed a tyrant; you

* *Præscriptiones.*] Compare b. vii. c. 5. They are the *exceptiones* of the Jurisconsulti, as Lexicons will show; in Greek παραγραφαί. *Spalding.* See sect. 23.

† As whether a man has committed sacrilege or simple theft.

‡ Compare sect. 70.

§ Vulg., *quæstio de facto.* Capperonier.

have not killed a tyrant;" here there is both question and *state.** 75. In like manner, "You have no right to proceed against me; I have a right," has no *state;* where is it then? "You have no right to proceed against me, because you are infamous;" here the question is "whether he is infamous," or "whether an infamous man has a right to proceed against another:" and here are both questions and *states.*† The kind of cause‡ is therefore exceptional, like the comparative, and that of recrimination.

76. But, you will say, "I have a right; you have not," is similar to "you have killed; I did right in killing;" I do not deny that it is so; but this does not make a *state;* for these are not propositions, (if they were, the cause would receive no explanation from them,) as propositions must be accompanied with reasons. "Horatius committed a crime, for he killed his sister; he committed no crime, for he had a right to kill her who mourned at the death of an enemy;" the *question* here will be, "whether this was a sufficient reason for killing her;" and thus the *state* will be that of *quality.* 77. In like manner with regard to exception: "You have no right to disinherit§ your son, for an infamous person is not allowed to engage in any legal process; I have a right, for disinheriting is not a legal process;" the question is, "what is a legal process?" here we shall use *definition;*‖ "you are not allowed to disinherit;" here will be the *syllogism.*¶ The case will be similar with regard to all matters concerning the ratiocinatory and legal *states.* 78. I am not unaware, however, that some have included exception under the ratiocinatory kind of states, in this way: "I have killed a man, but by order of the emperor;" "I gave up the offerings in the temple to a tyrant, but he compelled me to do so;" "I quitted my post, but through being harassed by bad weather, floods, ill-health;"

* *Status conjecturalis,* or *facti quæstio.* Capperonier.

‡ Of two kinds; first, the *status conjecturalis* or *definitivus,* whether the man was really infamous; secondly, the *status qualitatis,* whether an infamous person has the right of going to law. *Capperonier.*

† *Genus causæ,* not status; see sect. 67; also iii. 10, iii. 4, respecting the *genus comparativum* and *mutua accusatio.* Also vii, 2, 9, and 22; vii. 4, 12. *Spalding.*

§ A father could not disinherit his son without taking him before the judges, and proving his unworthiness by a regular legal process.

‖ *Finiemus.*] Erit *status definitivus.* Capperonier.

¶ That is, the *status* called *syllogismus.* See sect. 16. *Capperonier.*

that is, it was not my fault, but the fault of those circumstances. 79. From these authors I differ still more widely;* for it is not the act that is brought under the exceptional *state*, but the cause of the act, as happens indeed in almost every defence; and besides, he who adopts such a mode of defence, does not depart from the *state* of *quality*,† for he says that he himself is free from blame; so that two kinds of quality‡ are rather to be distinguished; one, by which the act and the accused party, the other, by which the accused only, is defended.§

80. We must therefore adhere to those writers whose authority Cicero‖ has followed, and who say that there are three points about which there is a question in every cause; *whether a thing* is,¶ *what it is*,** and *of what species it is*;†† a distinction which even nature herself teaches us; for there must first of all be something which is the object of the question; concerning which it certainly cannot be determined *what* and *of what species it is*, until it be settled that it really exists; and this, therefore, is the first question. 81. But as to that which is proved to exist, it does not immediately appear *what it is*. When this point is also decided, there remains, last of all, the *quality;* and, when all these particulars are settled, nothing further is left.

82. Under these heads are contained indefinite‡‡ and definite‖‖ questions; some of these heads are considered in whatever kind of matter we discuss, whether demonstrative, deliberative, or judicial; and they comprise also suits at law,

* *Liberiùs.*] Than from those to whom he alludes in sect. 66.

† *A formâ qualitatis.* That is, from the *status qualitatis assumptionis*, which the Greeks call *μετάστασις*, and the Latins *remotio criminis*, or sometimes *purgatio*. Capperonier.

‡ *Quality* is twofold; *absolute*, when we contend that a deed is in itself just and right; *assumptive* or *presumptive*, when we attempt to palliate, by assumed arguments, that which we cannot prove to be right in itself, and to show that the agent is not to be blamed. *Turnebus.*

§ When we throw the blame upon circumstances, as in sect. 78.

‖ Compare sect. 44. *Spalding.*

¶ *Status conjecturalis.*

** *Status definitivus.*

†† *Status qualitatis.*

‡‡ Theses, or general questions.

§§ Referring to certain times, places, circumstances.

whether regarded with reference to ratiocinatory or to legal questions; for there is no legal dispute which is not to be resolved by the aid of definition, consideration of quality, or conjecture 83. But to those who are instructing the ignorant, a plan more extended at first, and a road, if not marked out by the straightest possible line, yet more easy and open, will not be without advantage. Let students learn, therefore, before all, that there are four modes of proceeding in every cause; which four modes he who is going to plead ought to make it his first business to consider. For, to begin first of all with the defendant, by far the strongest mode of defence is, *if the charge which is made can be denied;** the next, *if an act of the kind charged against the accused can be said not to have been done;*† the third, and most honourable, *if what is done is proved to have been justly done.*‡ If we cannot command these methods, the last and only mode of defence is that of eluding an accusation, which can neither be denied nor combated, by the aid of some point of law, so as make it appear that the action has not been brought in due legal form. 84. Hence arise questions referring either to the general action or to exception;§ for there are some things objectionable in their own nature, yet allowed by law, as it was permitted, for instance, by the twelve tables, that the body of a debtor might be divided among his creditors;‖ but public feeling has set aside that law; and some things may be equitable in themselves, but prohibited by law, as liberty in making wills.**

85. By the accuser nothing more is to be kept in view than that he must prove that *something was done;* that *a particular thing was done;* that *it was done wrongfully;* and that *he brings his action according to law.* Thus every cause will depend upon the same sorts of questions, only the allegations

* *Status infitialis*, otherwise *conjecturalis*, vulgò *quæstio facti.* Capperonier.

† *Status definitivus.* Capperonier.

‡ *Status qualitatis*, vulgò *juris quæstio.* Capperonier.

§ *Status μεταλήψεως* or *παραγραφῆς*, *exceptio fori*, or *exceptio judicii de linatoria*, which is sometimes called *præscriptio.* Capperonier.

‖ See Aul. Gell. xx. 1.

** Of the restraints laid on testamentary disposition of property, see Smith's Dict. of Gr. and Rom. Ant. Art. *Legatum.* The most effective law was the *lex Falcidia*, passed B.C. 40, which provided that a testator should not give more than three-fourths of his property in legacies, and thus secured at least one-fourth to the legal heir.

of the different parties will sometimes be interchanged;* as in those causes in which the question is about a reward, it is for the plaintiff to prove that what was done was right.

86. These plans, as it were, and forms, of proceeding, which I then called *general states*, resolve themselves, as I showed,† into two general kinds, the one dependent on reasoning, the other on legality. The one dependent on reasoning is the more simple, as it consists merely in the contemplation of the nature of things; and it is sufficient, therefore, in respect to it, to mention *conjecture*, *definition*, *quality*. 87. Of legal questions there must necessarily be more species, as laws are numerous, and have various forms. We rest on the words of one law, and on the spirit of another; when we find no law ready to support us, we press some one into our service; we compare some, one with another; we interpret some in a manner different from that in which they are usually understood. 88. Thus from those three *states*‡ spring the following resemblances as it were of states, sometimes simple, sometimes mixed,§ yet always wearing their own peculiar appearance, as that which refers to *what is written and what is intended*, which, without doubt, is included under *quality* or *conjecture;* that which is treated by *syllogism*, which has regard especially to *quality;* that which respects *contradictory laws*, which belongs to the same *states* as *what is written and what is intended;* and that referring to *ambiguity*, which is always settled by conjecture 89. *Definition* also is common to both kinds || of questions, those which depend on the consideration of matters of fact, and those which are to be decided by adherence to the written letter.

All these questions, though they fall under those three *states*, yet since they have severally, as I said,¶ something

* Thus, in accusations, the complainant is to prove that something is wrong; but, in cases of claiming rewards, the complainant has to prove that something is right. *Turnebus.*

† See sect. 67; also c. v. sect. 4.

‡ Those of conjecture, definition, and quality. *Capperonier.*

§ Because there is sometimes in one cause one *state* of *scriptum et voluntas;* sometimes several *scripta* and several *voluntates;* or sometimes *scriptum et voluntas* is mixed with *leges contrariæ* and *ambiguitas;* and there are similar combinations in other causes. *Turnebus.*

|| He alludes to the two general questions, *de re* and *de scripto.* See c. 5. *Capperonier.*

¶ He alludes, if I mistake not, to sect. 87 *Spalding.*

peculiar, appear necessary to be explained to learners; and they may be allowed to call them either *legal states* or *questions*, or *secondary heads*, if they but understand that nothing is sought in them but what is contained under the three general heads which I have before mentioned.* 90. But

* Sect. 80.

'In these sections, 87—89," says Capperonier, "is shown the later system of Quintilian concerning *status oratorii*; and, that it may be the better understood, I have thought it well to compare it, not only with his former system, but with those of Cicero, the writer *ad Herennium*, and Hermogenes.

Quintilian at first admitted four *general states*:

1. The conjectural.
2. The definitive.
3. That of quality.
4. The legal.

He then divided the legal into five species:

1. That of *scriptum et voluntas.*
2. That of contradictory laws.
3. The syllogism.
4. That of ambiguity.
5. That of exception.

But in his later system he admits only three *general states*:

1. The conjectural.
2. The definitive.
3. That of quality, which in b. vii. c. 4, he divides in the same manner as other rhetoricians; for, in his retractation, he endeavours to prove that *exception* is not properly a *state*; and that his *first four species of the legal state* may be referred to some one of the three *general states.*

The system of Cicero respecting *states* is to be found in his first book *de Inventione Rhetoricâ*, near the commencement.

He acknowledges four *ratiocinatory states*:

1. The conjectural, or that concerning fact.
2. The definitive, or that concerning the name of a fact
3. That of quality, which he divides into
   1. The judicial { which is either *absolute* or *assumptive*; and the *assumptive* he divides into
      1. Concession.
      2. *Remotio criminis*, or averting of the accusation.
      3. *Relatio criminis*, or retorting on the accuser.
      4. Comparison.
4. Exception.

And five *legal states*:

1. That of *scriptum et voluntas.*
2. That of contradictory laws.
3. That of ambiguity.

with questions referring to *quantity*, to *a whole as consisting of parts*, to *relation*, and, as some have thought, to *comparison*,

4. The ratiocinatory, or syllogism.
5. The definitive.

But in his *de Oratore*, ii. 24, 26, Topic. c. 21, 24, and Part. Orat. c. 29, he mentions only the three most common *states:*

1. The conjectural.
2. The definitive.
3. That of quality.

The system of the writer *ad Herennium* concerning *states* is that which follows, b. i. c. 11, 13.

He first of all lays down these three general *states:*

1. The conjectural.
2. The legal.
3. The judicial, or that of quality.

He then divides the legal into six species:

1. That of *scriptum et voluntas.*
2. That of contradictory laws.
3. That of ambiguity.
4. That of definition.
5. That of exception.
6. The ratiocinatory, or syllogism.

The judicial he divides into two species:

1. The absolute.
2. The assumptive; which he subdivides into four:
   1. Concession.
   2. *Remotio criminis.*
   3. *Relatio criminis.*
   4. Comparison.

The system of Hermogenes, as given in his books de Partitionibus, is this:

Of every rhetorical question the *status* is either

1. One of conjecture, or,
2. One of definition, or,
3. One of quality.

Quality is either

1. Ratiocinatory, about something done, or,
2. Legal, about something written.

Ratiocinatory quality is either

1. Practical, about something to be done, or,
2. Juridical, about something done.

Juridical quality is either

1. Absolute, or,
2. Presumptive, or assumptive.

Assumptive juridical quality is divided into

1. *Relatio*, that is, retorting on the accuser.
2. Comparison.
3. *Remotio*, or repelling of the accusation.
4. Concession.

the case is not the same; for they are to be regarded, not as concerning differences in the laws, but as dependent on reasoning alone, and are, therefore, always to be placed under conjecture or quality; as when we ask *with what intention* a person did anything, or *at what time*, or *in what place*. 91. But I shall speak of particular questions when I proceed to treat of the rules for division.*

This is agreed among all writers, that in every simple cause there is but one single *state*;† but that many questions, which, as secondary points, are referred to that in which the main point for judgment is contained, may be comprised in one and the same cause; (92. I also think that it is sometimes doubtful what state we ought to adopt, as many means of defence are employed against one accusation; and as it is said with regard to the colour‡ of a statement of facts, that that is the best which a speaker can best maintain, so it may be said in this case also, that that state should be chosen, in support of which the orator can put forth most strength; 93. and accordingly, in settling a mode of defence for Milo, one course found favour with Cicero, when he pleaded the cause, and another with Brutus, when he composed a speech for Milo by way of exercise;§ as Cicero maintained that *Clodius had been killed deservedly, as a lier-in-wait*, yet *without intention on the part of*

Legal quality is divided into questions respecting
1. *Scriptum et voluntas.*
2. Contradictory laws.
3. The syllogism.
4. Ambiguity.

To all these he subjoins exception, or μετάληψις, which he sometimes calls παραγραφή."

I have extracted this tabular view of *states* from Capperonier, because, though it has not escaped the sarcasm of Burmann, as indicating ostentatious diligence, it may be of great service to such as would thoroughly understand, not only this chapter, but many other parts of Quintilian.

* Book vii.

† To speak properly, there is in every simple cause but one principal *state*, though many other *states*, which we may call *incidental*, occur, and which are referred to the principal *state*. Capperonier.

‡ See iv. 2, 88.

§ See x. 1, 23; 5, 20. I have found no mention of this speech of Brutus in any author except Quintilian. To a speech of Brutus for Deiotarus there is an allusion in Cicero Brut. c. 5, ad Att. xiv. 1, and in the writer of the Dialogue de Or. c. 21; it was delivered, however, at a different time from that of Cicero for Deiotarus. The writer of the

Milo: but Brutus even gloried on behalf of Milo that he had killed a bad citizen;) 94. but that in complex causes two or three *states* may be found, either of different kinds, as when a person denies that he did one thing,* and maintains that he was in the right in doing another,† or of the same kind, as when a person denies two charges, or all the charges brought against him. 95. This happens, also, when there is a question about some one thing which several persons are trying to obtain, either all relying on the same kind of claim, as that of relationship; or some on one kind and some on another, as some on a will and some on relationship. But whenever there are several claimants, and one kind of defence is made against one and another against another, there must necessarily be several kinds of *states;* as in the following subject of controversy, the law standing thus: 96. *Let wills made according to the laws be valid. Let the children of intestate parents be heirs. Let a disinherited son possess none of his father's property.*‡ *Let an illegitimate son, if born before one that is legitimate, be to his father as legitimate; if born after, only as a citizen.*§ *Let it be lawful for every father to give his son in adoption. Let it be lawful for every son given in adoption to return into his own family if his natural father dies without children.* 97. A father, who, having two sons, had allowed one to be adopted by another man, and had disinherited the other, had afterwards an illegitimate son, and then, after appointing the disinherited son his heir, died. All the three laid claim to the estate. (Let me observe that the Greeks call an illegitimate son νόθος: we have no Latin term exactly corresponding to

Dialogue shows that the eloquence of Brutus was different from that of Cicero, see c. 17, 18, 25, and more fitted for philosophical discussion than for pleading causes, as also appears from Quintilian x. 1, 123. Compare Cic. ad Att. xiv. 20; xv. 1. *Spalding.*

* Here will be the *status conjecturalis*, or *facti quæstio.* Capperonier.

† Here will be the *status qualitatis absolutæ.* Capperonier.

‡ Whether there really was such a law among the Romans, (among the Greeks it is certain that there was,) or whether it was merely assumed in the schools for the purpose of exercise in declamation, is a matter of dispute with the *jarisconsulti.* See vii. 4, 11; viii. 47, 6. *Spalding.*

§ Nor can I say whether this was law beyond the walls of the schools. We find something very different in Papinianus. See Schulingius, Jurisprud. Ante Just. p. Ayreri 849. *Spalding.*

it,* as Cato remarks in one of his speeches, and, therefore, adopt the Greek word. But let us attend to our subject.) 98. To him who was named as heir in the will was opposed the law, *Let a disinherited son possess none of his father's property*, and hence arose the *state* referring to *what is written and what is intended*, it being inquired "whether he could inherit in any way? whether according to the intention of the father? whether as being named as heir in the will?" As to the illegitimate son, there arise two considerations, that he was born *after* the legitimate sons, and was *not* born *before* a legitimate one. 99. The first consideration goes into the *syllogism*† or inference, "whether sons alienated from the family‡ are in the same condition as if they had never been born?"§ The other is that regarding *what is written and what is intended;* for it is admitted that he was not born before a legitimate son; but he will rest his cause on the intention of the law, which he will say was, that an illegitimate son, born when there was no longer a legitimate son in the family, should be considered as legitimate. 100. He will also set aside the written letter of the law, by saying that "it is certainly no detriment to an illegitimate son if a legitimate one was not born after him," and will insist on this argument: *Suppose that an illegitimate son only be born; in what relation will he stand to his father? only as a citizen? Yet he will not be born after a legitimate son. Will he be as a son in every respect? yet he will not be born before a legitimate one. If, therefore, we can conclude nothing from the words of the law, we must take our stand on the intention of it.* 101. Nor let it perplex any one that two *states*‖ arise from one law; the law is two-fold,

* Among the Greeks *nothos* meant one who was born of a reputable father and a disreputable mother; the Latin *spurius*, on the contrary, meant one who was born of a reputable mother and disreputable father. See Isidore, Orig. ix. 5. Various derivations are given of the word *spurius*, but all doubtful.

† The first question will be treated under the *status legalis* which is called the syllogism, as it does not rest on the express words of the law, but infers from some part of the law something favourable to the matter in hand. *Capperonier.*

‡ Whether by adoption or by being disinherited. *Capperonier.*

§ If so, he was, though not *formally*, as they say, yet *virtually*, born before legitimate children. *Capperonier.*

‖ *Status legales;* one, the syllogism; the other, *de scripto et voluntate.* Capperonier.

and has accordingly the form of two laws. To the son wishing to return into the family, it will be said, in the first place, by him who is named as heir in the will, "Though it be lawful for you to return, I am still heir;" and the *state* will be the same* as in regard to the claim of the disinherited son; for the question is "whether a disinherited son can be heir?" 102. In the next place, it will be said by both, (as well by the one who is named heir as by the illegitimate one,) "It is not lawful for you to return into the family, for our father did not die without children." But, in saying this, each of the two will rest his case on his own peculiar ground; for the disinherited son will assert, "that a disinherited son is also one of the children," and will draw a proof of his assertion from the very law by which it is pretended that he is set aside; as it would be superfluous, he would say, for a disinherited son to be forbidden to inherit the property of his father, if he were to be accounted as a stranger, but, as he would have been, by his right as a son, the heir of his father if he had died without a will, the law is now brought against him, which, however, does not prevent him from being a son, but from being an heir. The state, then, will be that of *definition:* the question, "what is a son?" 103. The illegitimate son, on his part, will allege that his father did not die without children, resting on the same arguments which he used in making his claim at first, to show that he was a son; unless he also have recourse to the *state* of definition, and ask, "whether illegitimate children are not children?" There will thus be in this one cause either two special legal *states*, those of the *letter and intention* and the *syllogism*, besides one of *definition*, or those three which are the only† real and natural *states*, that of *conjecture*, with regard to the writing and intention of the writer, that of *quality* in the syllogism,‡ and that of *definition*, which sufficiently explains itself.

In every kind of legal controversy, too, must be comprehended a *cause*, a *matter for judgment*, and the *containing point*,§ for there is nothing brought into question in which

* Namely, *de scripto et voluntate*. Capperonier.

† See sect. 82.

‡ See sect. 88.

§ The *continens*, τὸ συνέχον, that which contains the very substance of the cause; that which is the chief matter in the cause to be pleaded,

there is not some reason, something to which judgment is directed, and something which chiefly contains the substance of the matter in question. But as these things vary according to the nature of causes, and as they are taught by most of the writers on judicial pleadings, let them be reserved for the part* in which I shall treat of such affairs. For the present, as I have divided† causes into three kinds, I shall follow the order which I have prescribed to myself.

CHAPTER VII.

Of panegyric or laudatory eloquence; not wholly distinct from practical discussion, § 1, 2. An orator does not always speak on doubtful points, 3, 4. Panegyric sometimes requires proof and defence, and very frequently amplification, 5, 6. Praise of the gods, 7—9. Praise of men more varied, 10, 11. Men extolled for personal endowments and fortunate circumstances, 12—14. For mental qualifications, 15, 16. For memorials which they leave of themselves, 17, 18. In censure the case is reversed, 19—21. On praise of the living, 22. It makes a difference where a panegyric is delivered, 23, 24. Advantage may be taken by the orator of the proximity of certain virtues to certain vices, 25. Praise of cities, places, public works, 26, 27. What *state* most prevailed in this department of oratory, 28.

1. I SHALL commence with that species of oratory which is devoted to praise and censure. This species Aristotle, and Theophrastus who follows him, seem to have excluded altogether from the practical department of speaking,‡ and to have considered that its only object is to please the audience, an object which is indeed intimated by its name *epideictic* from ἐπιδείκνυμι, *to display*. 2. But the usage of the Romans has given it a place in civil transactions; for funeral orations are often a duty attached to some public office, and are frequently assigned to the magistrates by a decree of the senate; and to commend or censure a witness is not without effect on the

and of the greatest efficiency for obtaining it, especially on the side of the plaintiff. *Capperonier.* See c. 11, sect. 4—10.

* C. 11.

† See the end of c. 3, and the whole of c. 4.

‡ Opposing the *epideictic*, as being for display, to the *pragmatic*, or practical.

result of trials; while it is lawful, also, to produce panegyrists on behalf of accused persons;* and the written compositions published *against Cicero's competitors*,† *against Lucius Piso, Clodius, and Curio*, are full of invective, and yet were received as opinions in the senate. 3. But I do not deny that some discourses of this kind have been composed merely for ostentation, as those in praise of the gods, and of the heroes of former times; a fact by which a question noticed above‡ is solved, and by which it is shown that those were mistaken who thought that an orator would never speak on any but doubtful subjects. 4. Are the praises of Jupiter Capitolinus, a perpetual subject at the sacred contests, doubtful? Or are they not treated in oratorical style?

But as panegyric which is employed for practical purposes, requires proof, so that which is composed for display, calls sometimes for some semblance of proof; 5. as the orator who should say that Romulus was the son of Mars, and was nursed by a she-wolf, would offer in proof of his celestial origin, the the arguments that, being thrown into a running stream, he could not be drowned; that he had such success in all his undertakings, that it is not incredible that he was sprung from the god who presides over war; and that the people of those times had no doubt that he was even received into heaven. 6. But some particulars in such subjects will be treated as if they required defence; as in a panegyric on Hercules, the orator would perhaps apologize for his change of dress with the queen of Lydia, and the tasks, as we are told, imposed upon him. But the peculiar business of panegyric is to *amplify* and *embellish* its subjects.

This kind of eloquence is devoted chiefly to gods or men; though it is sometimes employed about animals and things inanimate. 7. In praising the gods, we shall, in the first place

* If a man, for instance, was publicly accused, and had previously governed a province well, ten deputies might be sent from it to appear as his *laudatores* or eulogists on his trial. Such deputies were sent from Marseilles and Narbonne to speak in praise of Fonteius. *Turnebus.* See Cic. in Verr. v. 22.

† Quintilian means the attacks made by Cicero upon Catiline and Antonius, his competitors for the consulship. The fragments that remain of them are called *Oratio in Togâ Candidâ.* See the argument of Asconius Pedianus on that oration.

‡ C. 5, sect. 3.

express a general veneration for the majesty of their nature, and shall then eulogize the peculiar power of each, and such of their inventions as have conferred benefit on mankind. 8. In regard to Jupiter, for instance, his power in ruling all things is to be extolled; in regard to Mars, his supremacy in war; in regard to Neptune, his command of the sea. In respect to inventions, we extol, in praising Minerva, that of the arts; in praising Mercury, that of letters; in praising Apollo, that of medicine; in praising Ceres, that of corn; in praising Bacchus, that of wine. Whatever exploits, also, antiquity has recorded as performed by them, are to receive their encomium. Parentage, too, is a subject of panegyric in regard to the gods, as when any one is a son of Jupiter: antiquity, as to those who were sprung from Chaos; and offspring, as Apollo and Diana are an honour to Latona. 9. We may make it a subject of praise to some that they were born immortal; and to others, that they attained immortality by their merits; a kind of glory which the piety of our own emperor has made an honour to the present age.

10. The praise of men is more varied. First of all it is distinguished with respect to time, that which was before them, and that in which they themselves lived; and, in regard to those who are dead, that also which followed their death. Antecedent to the birth of a man will be his *country*, *parents*, and *ancestors*, to whom we may refer in two ways; for it will be honourable to them either to have equalled the nobility of their forefathers, or to have ennobled a humble origin by their achievements. 11. Other subjects for eulogy may also sometimes be found in the time that preceded a man's birth; such as occurrences, for example, that denoted his future eminence by prophetic indications or auguries; as the oracles are said to have foretold that the son of Thetis would be greater than his father. 12. The praises of a man personally should be derived from the qualities of his mind, body, or external circumstances. The merits of corporeal and accidental advantages are of less weight than those of the mind, and may be treated in many ways. Sometimes we celebrate beauty and strength with *honour of words*, as Homer extols them in his Agamemnon and Achilles. Sometimes comparative weakness may contribute much to our admiration, as when Homer says that Tydeus was small of stature, yet a warrior. 13. Fortune, too,

gives dignity, as in kings and princes; for in their condition there is the ampler field for displaying merit; and among people of other conditions, the less resources a person has, the greater honour he acquires by making a praiseworthy use of them. All advantages, indeed, which are external to us, and which have fallen to us accidentally, are not subjects of praise to a man merely because he possessed them, but only in case he employed them to good purpose. 14. For wealth, and power, and influence, as they offer most opportunities for good or evil, afford the surest test of our morals; since we are sure to be either better for them or worse.

15. Praise of the good qualities of the mind is always just; but more than one way may be pursued in the treatment of it; for sometimes it is more honourable to follow the progress of a person's life and the order of his actions; so that his natural genius, shown in his early years, may be first commended, then his advancement in learning, and then his course of conduct, including not only what he did, but what he said; sometimes it will be better to divide our praises among the several kinds of virtues fortitude, justice, temperance, and others, and to assign to each the honour of that which has been done under its influence. 16. Which of these two methods will be the more eligible for us, we shall have to consider according to our subject, keeping in mind, however, that the celebration of those deeds is most pleasing to the audience which the object of our praise is said to have been the first to do, or to have done alone, or with the aid of but few supporters; and whatever else he may have effected beyond hope or expectation, and especially what he has done for the good of others rather than for his own.

17. Of the time which follows the death of persons, it is not always in our power to treat; not only because we sometimes praise them while they are still living, but because few occasions offer on which divine honours, or public decrees, or statues erected at the expense of the state, can be celebrated. 18. Among such subjects for eulogy, I would reckon monuments of genius, which may be admired through all ages; for some, like Menander,* have obtained more justice from the judgment of posterity than from that of their contemporaries. Children reflect glory upon their parents, cities on their

* The comic poet. See x. 1, 72; Aul. Gell. xvii. 4.

founders, laws on those who have made them, arts on their inventors; and institutions also on their authors, as it was appointed by Numa, for instance, that we should worship the gods, and by Publicola that the consuls should lower the fasces before the people.

19. The same method will be observed in censure, but so as to set things in a different light; for meanness of origin has been a dishonour to many; and nobility itself has rendered others more conspicuous and more odious for their vices. To some, as is said to have been the case with Paris, mischief which it was foretold they should cause, has produced dislike; on others, as Thersites and Irus, deformity of person, or misfortune, has thrown contempt. In regard to others, good qualities corrupted by vices, have rendered them hateful; thus we find Nireus represented by the poets as cowardly, and Pleisthenes * as debauched. 20. Of the mind, too, there are as many vices as virtues; and both, as in panegyric, may be treated in two ways. On some men ignominy has been thrown after death; as on Mælius, whose house was levelled with the ground, and Marcus Manlius, whose prænomen was not allowed to be borne by his posterity. 21. Of the vicious, also, we hate even the parents. To founders of cities it is an opprobrium to have drawn together a people noxious to those around them; as was the case with the original author † of the Jewish superstition; so the laws of the Gracchi brought odium on their name; and any example of vice given to posterity disgraces its author, as that of the obscenity which a Persian is said to have first ventured to practise with a woman of Samos.‡ 22. With respect to the living, also, the judgments formed of them by others are proofs of their character; and the honour or dishonour shown to them proves the orator's eulogy or censure to be just.

23. But Aristotle thinks it of importance to the orator to

* It is uncertain who Pleisthenes was, or whether the reading be sound. Some would read Cleisthenes, who is mentioned as an effeminate and licentious man by Aristophanes, Ran. 57, and 425; and by Suidas.

† Gesner and Spalding rightly suppose that Moses is meant, not Christ, as some have imagined; for Quintilian must surely have known, as Gesner remarks, that the origin of the Jews was of earlier date than the time of Christ.

‡ Of this no mention is found elsewhere. *Spalding.*

consider the place in which anything is to be commended or censured; for it makes a great difference what the manners of the audience are, and what opinions are publicly entertained among them; as they will be most willing to believe that the virtues which they approve are in him who is eulogized, or that the vices which they hate are in him whom we censure. Thus the judgment formed by the orator as to the effect of his speech, even before the delivery of it, will be pretty certain. 24. Some praise of his audience, too, should always be mingled with his remarks, (for it makes them favourably disposed towards him,) and, whenever it is possible, should be so introduced as to strengthen his cause. A panegyric on literary studies will be received with less honour at Sparta than at Athens; a panegyric on patience and fortitude with greater. Among some people it is honourable to live by plunder*; among others to respect the laws. Frugality would perhaps have been an object of hatred with the Sybarites; luxury would have been the greatest of crimes among the ancient Romans. 25. Similar diversity is found in individuals. A judge is most favourable to a pleader when he thinks that his sentiments coincide with his own. Aristotle also directs, (a precept which Cornelius Celsus has since carried almost to excess,) that, as there is a certain proximity of virtues and vices, we should sometimes avail ourselves of words that approach each other in sense, so as, for instance, to call a person brave instead of rash, liberal instead of prodigal, frugal instead of avaricious; or, on the contrary, the vice may be put for the virtue. This is an artifice, however, which a true orator, that is, a good man, will never adopt, unless he happen of to be led to it by a notion promoting the public good.

26 Cities are eulogized in the same way as persons; for their founder is to be considered as their parent; and antiquity confers much dignity on their inhabitants; as we see in regard to people who are said to be sprung from the soil of their country. In their transactions there are the same virtues and vices as in the conduct of individuals. Some have peculiar advantages to be noticed, as in their situation or defences. Citizens may be an honour to them, as children to parents.

27. Encomiums may also be bestowed on public works, in respect to which magnificence, utility, beauty, and the architect

* See Thucyd. i. 5; Hom. Odyss. iii. 71.

of them, are commonly considered. Magnificence, as in temples; utility, as in walls; beauty, and the architect, in both.

Panegyrics on places are also found; as that on Sicily in Cicero*; in which we regard, in like manner, beauty and utility; beauty in maritime regions, plains, and pleasant spots; utility, in respect to healthfulness or fertility of soil. There is a kind of general praise, too, for honourable sayings or actions. 28. There is praise, indeed, for things of every kind; for eulogies have been written on sleep and death, and by physicians on certain sorts of food.

While I do not admit, therefore, that this laudatory department of oratory relates only to questions concerning what is honourable, I think, at the same time, that it is chiefly comprised under *quality*†; though certainly all three states‡ may enter into this kind of composition, and Cicero§ has observed that Caius Cæsar has availed himself of them in his invective on Cato. But the whole of panegyrical oratory bears some resemblance to deliberative, because, for the most part, that which is recommended in the one is praised in the other.

CHAPTER VIII.

Deliberative oratory not confined to questions of utility, § 1. Whether nothing is useful but what is honourable, 2, 3. Deliberative oratory not concerned wholly with the *state* of quality, 4, 5. What kind of exordium requisite in it, 6—9. Statement of facts, 10, 11. The passions to be moved, 12, 13. Whether it solely concerns affairs of government, 14. That a thing can be done, is either certain or uncertain, 17—21. The three topics of persuasion, 22—26. Some do not distinguish topics from divisions of topics, 27, 28. The pleasing, the useful, and the honourable, 29—35. Use of examples, 36, 37. How things that are honourable may be recommended, and sometimes such as are at variance with honour, 38—47. Authority of the speaker, 48. Prosopopeiæ, 49—51. In the schools deliberative subjects have a great resemblance to controversies, 52—57. An error into which declaimers fall, 58—66. Advantage of reading history, 67—70.

I AM surprised, also, that deliberative oratory is confined

* Verr. ii. 1, *seqq.*; also iv. 48.

† The *state* of quality, which refers not less to what is honourable than to what is just. *Capperonier.*

‡ Those of conjecture, quality, and definition. *Capperonier.*

§ Topic. c. 25.

by some authors wholly to matters of utility. If we ought to follow one sole object in it, the opinion of Cicero * would have greater weight with me, who thinks that this department of speaking is chiefly occupied about what is honourable †. Nor do I doubt, indeed, that those who adopt the former opinion, consider, according to a very noble principle, that nothing is advantageous but what is honourable. 2. This notion would certainly be very just, if the resolutions of the good and wise were always ready to support us. But in addressing the unlearned, to whom our opinions must often be delivered, and especially in haranguing the people, the majority of whom are ignorant, the two must be kept distinct,‡ and we must speak more in conformity with ordinary apprehension. 3. For there are many who, though they may consider an action to be honourable, do not immediately allow it to be sufficiently advantageous, and, led by the prospect of advantage, approve what they cannot doubt to be highly dishonourable, as the treaty with the Numantines § and the passing under the yoke at the defile of Caudium.‖

4. Nor is it sufficient to include deliberative oratory ¶ in the *state* of quality, in which is comprised the question of what is honourable and what is useful; for often, in respect to these, there is room for conjecture; at times some definition is to be considered;** and occasionally, too, legal inquiries †† may occur, especially in reference to private proceedings, if ever a doubt arises *whether a thing be lawful.* Of conjecture I shall speak more fully a little below.‡‡ 5. As to definition, meanwhile, there is this question in Demosthenes, "Whether Philip should *give* or *restore* §§ Halonnesus to the Athenians?" and in Cicero, in

* De Orat. ii. 82.

† *Dignitate.*] That is, *honestate.* Capperonier.

‡ We must not speak of that which is honourable as being necessarily advantageous.

§ Florus, ii. 18; Vell. Pat. ii. 90.

‖ Liv. ix. 1—11.

¶ *Eas.*] Sc. *deliberativas,* which occurs at the beginning of the chapter.

** That is, it may often come under the *status conjecturalis* or *status definitivus.*

†† *Legales—tractatus.*] That is, *legales quæstiones* or *status.* Capperonier.

‡‡ Sect. 16, 17.

§§ "The island of Halonnesus was anciently held by the Athenians but, in the time of Philip, was occupied by pirates, whom Philip

his Philippics, "What is a tumult?"* Is there not, too, the question, similar to those in judicial causes, about the statue of Servius Sulpicius, "whether statues are to be erected to those only who perish on an embassy by the sword?"† 6. The deliberative department of oratory, therefore, (which is also called the suasory,) while it consults concerning the future, inquires also into the past. It has two objects, *to persuade* and *to dissuade.*

An exordium, such as is usual in judicial pleadings, it does not require; because whoever consults an orator is already well-disposed to hear him. Yet the commencement, whatever it be, ought to have some resemblance to an exordium; for we must not begin abruptly, or with whatever we may fancy, because in every subject there is something naturally first. 7. In speaking before the senate, and, indeed, before the people, the same object is to be kept in view as in addressing judges, namely, that of securing the goodwill of the majority of those to whom we speak. Nor is this to be thought surprising, when the favour of the audience is sought even in panegyrics, where the purpose is not to attain any advantage, but merely to bestow praise. 8. Aristotle, indeed, and not without reason, thinks that we may often commence, in deliberative speeches, with an allusion to ourselves, or to the character of him who differs in opinion from us; borrowing this method, as it were, from judicial pleadings; sometimes in such a manner, that our subject may be made to appear of less or greater importance than our audience imagine it.‡ 9. In panegyrics, he thinks that the exordium may be allowed the utmost latitude; since it is sometimes taken from something foreign to the subject, as Isocrates has taken his in his oration in praise of Helen;§ or from something bordering on the subject,

ejected from it, but, when the Athenians asked for possession of it, he refused to give it them, saying that it was his own. The speech exhorts the Athenians not λαμβάνειν αὐτήν, ἀλλ' ἀπολαμβανειν, not to receive it as given, but as restored to them." Libanius's Argument to the speech of Demosthenes concerning Halonnesus. See Æsch. against Ctesiphon, p. 65, ed. Steph. *Spalding.*

* Philipp. viii. 1, 2. The senate deliberated whether they should call the hostile operations against Mark Antony a *bellum* or a *tumultus.*

† Philipp. ix. 1. Sulpicius was sent on an embassy to Mark Antony, and being unwell at the time, and it being winter, suffered so much from the journey that he died.

‡ Rhet. iii. 14, 11.

§ Isocrates commences with remarks on the rhetoricians and

as the same orator, in his Panegyric, complains that "more honour is paid to the good qualities of the body than to those of the mind;" and as Gorgias, in his oration at the Olympic games, extols those who first instituted such meetings. Sallust, following, doubtless, the example of these orators, has commenced his histories of the Jugurthine War and the Conspiracy of Catiline with introductions having no relation to his narratives. 10. But I am now to speak of deliberative oratory, in which, even when we adopt an exordium, we ought to content ourselves with one that is short, resembling as it were an initial chapter or statement.

As to a regular statement of facts, a private subject of discussion will never require it, at least a statement of the matter on which an opinion is to be given; for no man is ignorant of the particulars on which he consults others. 11. Statements, however, of many external circumstances relative to the subject of deliberation may be introduced. In deliberative addresses to the people a statement setting forth the orde. of circumstances is indispensable. 12. Deliberative oratory requires appeals to the feelings more than any other kind of eloquence; for indignation is often to be kindled and allayed; and the minds of the audience are to be moved to fear, eagerness, hatred, benevolence. Sometimes, too, pity is to be excited, whether we have, for example, to recommend that aid be given to a besieged town, or whether we be called upon to lament the overthrow of a people in alliance with us.

13. But what is of most weight in deliberative speeches is authority in the speaker; for he who desires everybody to trust to his opinion about what is expedient and honourable, ought to be, and to be esteemed, a man of the greatest judgment and probity. In judicial pleadings it is commonly thought allowable for a man to indulge, in some degree, his own feelings; but every one supposes that counsel is given by a speaker in accordance with his moral principles.

14. Most of the Greek rhetoricians have been of opinion that the business of all this kind of oratory is with addresses to the multitude, and have confined it wholly to affairs of government. Even Cicero * considers it chiefly with reference

sophists, who used to treat of absurd and trifling matters in their speeches. *Turnebus.*

* De Orat. ii. 81—83.

to that department, and accordingly says that for those who are to give advice concerning peace, war, levies of troops, public works, or revenues, the two things chiefly to be known are the *resources* and *the manners of the people* whom they address; so that his arguments may be derived at once from the particular circumstances and from the character of his hearers. 15. To me it appears that there is greater variety in this field of eloquence; for the classes of persons who consult, and the kinds of advice that may be given, are extremely numerous.

In persuading and dissuading, then, three particulars are chiefly to be regarded: *what is the subject of deliberation; who those that deliberate are;* and *what is the character of him that would influence their deliberations.*

16. As to that which is the subject of deliberation, it is either certain that it may be carried into effect, or uncertain. If it be uncertain, its uncertainty will be the sole point for consideration, or, I should say, the chief point, for it will often happen that we shall assert, first of all, that a thing, even if it could be done, ought not to be done, and, next, that it cannot be done. But when the question is respecting something uncertain, the point is conjectural,* as *whether the Isthmus can be cut through, or the Pontine marshes drained,*† *or a harbour made at Ostia?*‡ Or *whether Alexander was likely to find lands beyond the ocean?*‖ 17. But even in regard to things which are acknowledged to be practicable, there will sometimes be room for conjecture: as if it were inquired, for instance, *whether it would ever happen that the Romans would subdue Carthage; whether Hannibal would return if Scipio transported his army into Africa; whether the Samnites would keep faith if the Romans were to lay down their arms.*§ As to some things, too, it is credible both that they can be done, and that they will be done, but *at some other time*, or *in some other place*, or *in some other manner.*

18. Where there is no place for conjecture other points are

* *Conjectura est.*] That is, *status conjecturalis*, or *facti quæstio.* Capperonier.

† Respecting both these undertakings, see Suet. Cæs. c. 44; Calig. c. 21; Nero, c. 19. On digging through the Isthmus, there is a little treatise attributed to Lucian. *Spalding.*

‡ See ii. 21, 18.

§ See the first of the *Suasoriæ* of Se

‖ At the *Furcæ Caudinæ*; see sec

to be regarded. In the first place the deliberation will be held, either on account of the matter itself, on which opinions are asked, or on account of some extrinsic reasons that affect it. The senate deliberates, for example, with regard to the matter itself, when they consider *whether they shall vote pay for the army.** 19. This is a simple question. Reasons are adduced for doing a thing, as when the senate deliberates *whether they shall deliver up the Fabii to the Gauls threatening war;*† or for not doing it, as when Julius Cæsar deliberates *whether he shall persist in marching into Germany*, when his soldiers were everywhere making their wills.‡ 20. These two questions offer more than one point for consideration; for as to the former, the reason for deliberating is, that the Gauls are threatening war, but a question may also be raised, *whether even, without such threatening, those ought not to have been given up, who, being sent as ambassadors, had engaged in battle contrary to law, and had killed the king* § *to whom they had received communications?* 21. As to the other subject, Cæsar would, doubtless, not have deliberated at all, if it had not been for the consternation of his troops; yet there is room for inquiring *whether, independently of that circumstance, it would have been proper for him to proceed into Germany.* But we must always speak first on that point which might be a subject for deliberation even if other circumstances were detached from it.

22. Some have thought that the topics for persuasion are the three considerations *what is honourable, what is useful*, and *what is necessary.* For the introduction of the third I find no motive;‖ for, when any force oppresses us, it may be necessary for us *to suffer* something, but certainly not *to do* anything; but it is about *doing* that deliberation is concerned. 23. Or if they call that necessity to which men are driven by the fear of some greater evil, the question respect-

* Livy, v. 59, relates that the senate decreed pay for the soldiers from the public treasury, they having previously supported themselves in the field at their own expense; a decree which was very pleasing to the people. *Turnebus.*

† Livy, v. 30.

‡ At the time when he was going to march against Ariovistus: Cæs. B. G. i. 39.

§ He is called *dux* by Livy, v. 36. *Capperonier.*

‖ According to the opinion of Aristotle, Rhet. i. 4, 2.

ing it will be one of expediency; as *if the inhabitants of a besieged city, inferior in numbers to the besiegers, and in want of water and provisions, deliberate about surrendering to the enemy*, and it be said, that *it is necessary* for them to surrender, it must be added, *for otherwise they must be destroyed*, and thus it appears that it is *not necessary* for them to surrender, for the very reason that they may be destroyed if they prefer to submit to destruction. In fact, the Saguntines* did not surrender, nor those who were surrounded in the vessel of Opitergium.† 24. In such circumstances, therefore, the question will be either concerning expediency, alone, or there will be hesitation between what is expedient and what is honourable. But, it may be said, if a man wishes to have children, he is under the *necessity* of taking a wife. Doubtless; but he who wishes to have children must first be convinced that he ought to take a wife; 25. and consequently there appears to me to be no place for deliberation when there is necessity, any more than when it is settled that a thing cannot be done; for all deliberation is about something doubtful. Those, therefore, have made a better distinction who have called the third head δυνατόν, which our countrymen term *possibile*, "possibility;" and though our Latin term may seem uncouth, yet it is the only one to be found

26. That these three considerations do not enter into every subject of deliberation is too evident to make it necessary for me to demonstrate. Yet by most writers the number is increased; for things are reckoned by them as *general* considerations which are but *special* objects for notice; since what is lawful, just, pious, equitable, and merciful, (*mansuetum*, for so they interpret τὸ ἥμερον,) and whatever else may be added of a similar character, may be included under *what is honourable*. 27. Whether, again, a thing be easy, important, pleasant, or free from danger, belongs to the consideration of *expediency*. These particular points for consideration arise from what is said in reply to us by our opponents: *It is indeed expedient, but it is difficult, of little importance, unpleasant, and dangerous.* 28. Yet some think that deliberation at times occurs concerning *agreeableness merely;* as when a consultation is held about the erection of a theatre, or the institution

* Liv. xxi. 14; Sil. Ital. ii. 696.

† See Flor. ii. 33; Lucan, iv. 462 *seqq.* They put one another to death.

of games; but I do not suppose that any man is so totally given up to pleasure as to look in a subject for deliberation to nothing but gratification. 29. For there must always be something that should be thought of higher consideration; as in regard to games, the honour of the gods; in regard to the erection of a theatre, useful relaxation from labour, and the unbecoming and inconvenient contention for places among the crowd, if there should be no theatre; and religion, at the same time, will have its place in the consideration, as we may call the theatre a temple, as it were, for the festival solemnized there to the gods.

30. Often, too, we say that advantage is to be disregarded, in order that we may do what is honourable; (as when we counsel the people of Opitergium not to surrender themselves to the enemy, though they will perish unless they do so;) and sometimes we may have occasion to set what is honourable below what is advantageous; (as when we advise, as in the second Punic war, that the slaves should be armed;*) 31. though even in the latter case we must not altogether admit that the proceeding is dishonourable; (for we may say that all men are free by nature, and are formed of the same matter, and that some even of the slaves may be descended from noble ancestors;) and, in the former case, when the danger is evident, other considerations may be alleged, as we may assert that, if they surrender, they may perish even more cruelly, should the enemy, for instance, not keep their word, or should Cæsar, as is more probable, obtain the superiority. 32. But considerations which are so much opposed to one another, are frequently softened by some alteration in the words; for expediency itself is altogether set at nought by that sect † who say not only that what is honourable is always preferable to what is expedient, but that nothing can even be expedient which is not honourable; while, on the other hand, what we call honourable, another sect ‡ calls vain, ostentatious, foolish, and more commendable in words than in reality.

33. Nor is what is advantageous compared only with what is disadvantageous, but things that are advantageous or disadvantageous are compared with one another; as when we try to

* After the battle of Cannæ: Florus, ii. 6; Livy, xxii. 57.
† The Stoics. *Gallæus.*
‡ The Epicureans. *Gallæus.*

determine, of two advantageous measures, which is the more advantageous, or of two that are disadvantageous, which is the less so. The difficulty may be still increased; for sometimes three subjects for deliberation may present themselves; as when Pompey deliberated* whether he should betake himself to Parthia, or Africa, or Egypt. Thus it is not only inquired which of two courses is preferable, but which is the most eligible of three. 34. In questions of this kind, there will never occur any doubt as to a matter which is every way in our favour; for when there is no room for speaking against a measure what motive can there be for hesitating about it? Thus every subject for deliberation is generally nothing else but a subject for comparison; and we must consider, both *what we would attain* and *by what means*, so that we may form an estimate *whether there is greater advantage in that which we pursue, or greater disadvantage in the means by which we pursue it.* 35. A question of advantage may also have reference to time: *it is expedient, but not now;* or to place: *not here;* or to persons: *not for us, or against those;* or to a particular mode of proceeding: *not thus;* or to measure: *not to so great a degree.*

But we have still more frequently to take persons† into consideration, with a view to what may be becoming; a point which is to be regarded in respect not only to ourselves but to those also who consult us. 36. Though examples, therefore, are of the utmost effect in deliberative oratory, because men are most easily led to consent to any measure by instances of similar proceedings, yet it makes a great difference *whose* authority is adduced, and *to whom* it is recommended; for the feelings of those who listen to deliberative speeches are various. 37. Our audience may be also of two kinds; for those who consult us, are either many, or single individuals; and, as to each, distinctions are to be made; since, with regard to a number of persons, it makes a great difference whether they are a *senate*, or a *people*, whether *Romans*, or *Fidenates*, whether *Greeks*, or *Barbarians*; and, in respect to individuals, whether we recommend that public offices should be sought by *Cato* or by *Caius Marius*, and whether *Scipio the elder*, or *Fabius* con

* After the battle of Pharsalia; see Plutarch. Vit. Pomp.; Lucan, viii. 256 *seqq.*

† He now enters on the second part of the division which he made in sect. 15.

sult with us on the mode of conducting a war.* 38. We must in like manner look to sex, dignity, and age. But it is the *character* of our hearers that should lead us to make the chief difference in our addresses to them. To recommend honourable measures to those who are honourable is extremely easy; but if we ever have occasion to enforce a right course of conduct on the unprincipled, we must be careful not to reproach them with the opposite nature of their life. 39. The minds of such an audience are to be influenced, not by dissertations on the nature of virtue, for which they have no regard, but by allusions to honour, and to the opinion of others, and if such arguments to their vanity do not move them, by showing the advantage likely to follow from what you advise, or rather perhaps, and with more effect, by showing them how much is to be dreaded if they act otherwise. 40. For besides the fact that minds of the lightest principles are most easily alarmed, I know not whether the fear of evil has not naturally more influence with the majority of mankind than the hope of good; to whom also the knowledge of what is vicious comes with greater facility than the knowledge of that which is virtuous. 41. Sometimes also actions which are scarcely honourable are recommended to the good; and to those of a rather opposite character are proposed measures in which nothing but the advantage of those who seek the advice is regarded.

I am well aware what sort of reflection may at once occur to the reader of this passage. "Is this, then," he may ask, "the practice that you recommend?† and do you think it right?" 42. Cicero might absolve me, who writes in the following manner to Brutus,‡ (after mentioning many courses of conduct which might be fairly recommended to Cæsar,§) *should I act as an honest man, if I should recommend these measures? Certainly not; for the proper object of an adviser is the advantage of him whom he advises. But the measures are right. Who says otherwise? But in giving advice there is*

* In Livy, xxxviii. 40, Scipio and Fabius deliberate on the mode of conducting the war against Carthage; Scipio recommends that it be transferred into Africa; Fabius, that it be carried on in Italy. *Turnebus.*

† A passage very similar to that in Cicero pro Cælio, 4, 17: *Hæc igitur est tua disciplina?* &c. See ix. 2, 15. *Spalding.*

‡ The letter is not extant. *Capperonier.*

§ Augustus.

not always room for what is right. As this question, however, is of a deeper nature, and does not concern deliberative speeches only, the subject is reserved by me for my twelfth book,* which will be my last. 43. I should not wish anything to be done dishonourably;† and, in the meantime, let these questions be considered to belong at least to the exercises of the schools; for the nature of what is bad should be known, that we may the better support what is good.

44. If any one, however, recommend to a good man anything not quite honourable, let him remember not to recommend it *as dishonourable*, in the manner in which some declaimers urge Sextus Pompey to engage in piracy, for the very reason that it is nefarious and cruel; but some palliation must be thrown over what is disgraceful, even in addressing the immoral. 45. It is in this way that Catiline speaks in Sallust,‡ so that he seems to rush daringly into a heinous enterprise, not through want of regard for honesty, but through indignation. It is thus also that Atreus speaks in Varius:§

> "I now endure gross wickedness, and now
> I'm forc'd to act it."

How much more then is this pretension to honour to be maintained before those who have a real regard to their character! 46. Accordingly, if we advise Cicero to implore the mercy of Antony, or even to burn his Philippics, (supposing such to be the condition on which Antony offers him life,‖) we shall not insist upon his love of life, (for if this has any influence on his mind, it will maintain that influence even though we remain silent.) but we shall exhort him to preserve himself for the service of his country. 47. He will have occasion for such a pretext, that he may not be ashamed of his suppli-

* See the whole of the twelfth chapter.

† *Nec ego quicquam fieri turpiter velim.*] Though a dishonourable course may at times be recommended, Quintilian would not have it recommended as dishonourable, but would have some plausible pretext alleged for adopting it. *Rollin.*

‡ Catil. c. 20, ed. Cort.

§ In his Thyestes. See x. 1, 98. This was the Varius who was the friend of Virgil and Horace.

‖ See Sen. Suasor. 6 and 7.

cations to Antony. Or if we advise Caius Cæsar* to assume kingly power, we shall assert that the state cannot subsist but under the rule of one master; for he who deliberates about a criminal proceeding, seeks only how he may appear to do as little wrong as possible.

48. It is of much importance, also, what the character of the adviser is; because, if his previous life has been illustrious, or if the nobility of his birth, or his age or fortune, excites expectation, care must be taken that what he says may not be at variance with the dignity of him who says it; but a character of a contrary nature requires a humbler tone; for what is liberty in some, is, in others, called presumption; to some their authority is sufficient support, while the force of reason itself scarcely upholds others.

49. In consequence *prosopopeiæ*† appear to me the most difficult of all speeches of this kind; for in them the task of sustaining a character is added to the other arduous points of suasory eloquence. Cæsar, Cicero, and Cato, speaking on the same subject, must each express himself differently. But exercise in this department is extremely beneficial, both because it requires double effort,‡ and because it greatly improves the powers of those who would be poets or historians. 50. To orators it is even indispensable; for there are many speeches composed by Greek and Latin orators for others to use, to whose condition and character what was expressed in them was to be adapted. Did Cicero think uniformly in the same manner, or assume the same character, when he wrote for Cneius Pompey, for Titus Ampius, and for others? Did he not rather, looking to the fortune, dignity, and actions of each of them, express the very character of all to whom he gave words, so that, though they spoke in a better style than their own, they yet appeared to speak in their own persons?

* Augustus. See the arguments used by Agrippa and Mæcenas, to induce him to assume the sovereignty, in Dion Cassius. "But even the wisest of the Romans seem to have felt such alarm at the mention of the word *regnum*, that Quintilian himself, who not only endured the rule of Domitian, but called it one of the greatest blessings that had ever fallen upon mankind, alludes, by no means obscurely, to affectation of sovereign power as a *res nefaria*, a "criminal proceeding." *Spalding.*

† By *prosopopeiæ* he understands declamations in which the speaker assumes the character of another person, and represents him as deliberating. *Rollin.* See vi. 1, 25; ix. 2, 29, 37; xi. 1, 39.

‡ For the reason given above, that the character must be sustained, and persuasive arguments found.

51. A speech is not less faulty which is unsuited to the person, than that which is unsuited to the subject, to which it ought to be adapted. Lysias, accordingly, is thought to deserve great praise for preserving so exact an air of truth in the speeches which he wrote for the illiterate.*

It ought, indeed, to be a chief object with declaimers to consider what is suitable to different characters; for they speak on but few subjects of controversy as advocates,† but generally harangue in the character of sons, fathers, rich men, old men, morose or good-natured persons, misers or superstitious people, cowards or jesters; so that actors in comedy have scarcely more parts to master on the stage than they have in the schools. 52. All these representations of characters may be regarded as *prosopopeiæ*, which I include under deliberative orations, because they differ from them in nothing but the personation of a character, though this is sometimes introduced into those deliberative subjects, which, taken from history, are conducted under the real names of the speakers. 53. Nor am I ignorant that poetical and historical *prosopopeiæ* are sometimes given in the schools by way of exercise; as the pleading of Priam before Achilles, or the address of Sylla to the people on laying down the dictatorship. But these will fall under some of the three heads into which I have divided causes; for we have to intreat, to make declarations, to give reasons, and to do other things of which I have spoken above,‡ in various forms and as the subject may require, both in the judicial, and in the deliberative, and in the demonstrative kind of oratory. 54. But in all these§ we very often utter fictitious speeches attributed to characters which we ourselves introduce; as in Cicero's speech for Cœlius, Appius Cæcus, and Clodius, the brother of Clodia, are both represented as

* Such is the commendation bestowed upon him by Dionysius Halicarnassensis, p. 82.

† In scholastic declamations the pupils spoke on few subjects as advocates, but generally in the character of one of the parties concerned, as sons, fathers, old men, &c.; and thus *prosopopeiæ* differed from *suasoriæ* only in the character maintained; for in *suasoriæ* the speaker gave advice in his own person, in *prosopopeiæ* in that of another. *Rollin.*

‡ C. 4, sect. 3.

§ *In his.*] I consider the word *his* as referring to the three kinds of oratory which Quintilian has just mentioned, and not, as Gedoyn thinks, to *rogare*, &c.; though his view of the passage is not without speciousness. *Spalding.*

addressing Clodia, the former being made to reproach her with her intrigues, and the other to admonish her about them.*

55. Matters for debate, too, are often introduced in the schools, which approach nearer to the judicial than the deliberative kind of oratory, and which are indeed compounded of the two; as when a discussion is held before Cæsar about the punishment of Theodotus;† for it consists of an accusation and a defence, which are the proper parts of judicial pleadings. 56. But the question of expediency also enters into it; it is inquired *whether it was to the advantage of Cæsar that Pompey was killed; whether war is to be apprehended from the king if Theodotus be put to death; whether such war would not be embarrassing and dangerous at the present time, and likely to be of long duration.* 57. Considerations also arise about the honourableness of the proceeding: as *whether it would be becoming in Cæsar to avenge Pompey; whether it was to be apprehended that he would injure the cause of his party, if he should confess that Pompey was undeserving of death.* 58. Deliberations on such questions may occur even in real causes.‡

There has, however, prevailed among most declaimers, in regard to deliberative speeches, an error that has not been without its consequences; for they have imagined that the deliberative style of speaking is different from the judicial, and indeed altogether opposed to it; and they have accordingly affected abrupt commencements, a kind of oratory always vehement, and a *liberal embellishment*, as they call it,§ in their expressions, and have studied to make shorter notes.‖

* C. 14, 15. The text is *ille in castigationem, hic in hortationem amorum, compositus.* The soundness of *hortationem* is doubtful, but nothing better has been suggested. Gesner proposed *curationem*, which, I suppose, hardly satisfied himself, and has satisfied no one else. If we turn to the passage of Cicero, we find that the brother is made to dissuade the sister from following one who despises her, and to advise her, if she will still continue to intrigue, to seek some other object for her love.

† A rhetorician of Chios or Samos, who was the first to suggest to Ptolemy that Pompey, when he landed in Egypt, should be put to death. See Plutarch, Life of Pompey, c. 77, 80; Appian, B.C. ii. 84, 90; Seneca de Irâ, ii. 2; Seneca Controvers. ii. 13.

‡ Comp. c. 62.

§ Comp. ii. 12, 9. *Spalding.*

‖ *Breviores commentarios.*] They brought less written matter from home, and rose to speak relying on their own ardour and resolution to

forsooth, for deliberative than for judicial subjects. 59. For my part, though I do not see that there is any need for a regular exordium in deliberative speeches for the reasons which I have previously stated,* I still do not understand why we should commence with furious exclamation; for he who is asked his opinion on a question proposed, does not, if he is a man of sense, begin immediately to cry out, but endeavours to gain the confidence of those who consult him by a modest and rational entrance on the subject. 60. Or why should the style of the speaker be like a torrent, and uniformly vehement, when counsel requires in the most eminent degree moderation and calm reasoning? I admit that, in judicial pleadings, the tone of the speaker is often lowered in the exordium, the statement of facts, and the argumentative portions, and that, if you take away these three parts, there will remain something like the substance of which deliberative orations consist, but that substance ought to be more calm, not more violent and furious.

61. As to grandeur of diction, it is not to be affected by those who declaim deliberative speeches more than by others; but it comes more naturally to them; for to those who imagine their own subjects, great personages are generally most attractive, such as those of kings, princes, people, senates, with important topics for discussion; and thus, when the style is suited to the matter, it assumes a degree of magnificence from it. 62. With regard to real causes the case is different, and therefore Theophrastus† has pronounced that the language in all deliberative oratory should be free from every kind of affectation; following in this respect the authority of his master,‡ though he does not hesitate frequently to differ from him; 63. for Aristotle was of opinion§ that the panegyrical department of oratory was the best adapted for improvement in composition, and next to it the judicial; since the first is

pour forth words. Compare sect. 63. *Commentarii* here are notes made for future orations; see i. 8, 19; iii. 6, 59; and Cic. Brut. c. 44 extr. But as they made fewer notes for their speeches, the speeches were in consequence shorter. Comp. sect. 68. *Spalding.*

* Sect. 6.

† III. 1, 15.

‡ Aristotle.

§ See Rhet. iii. 12, 5; where, however, the reasons which Quintilian adds are not given. *Spalding.*

devoted wholly to display, and the latter requires art so as even to deceive the hearers if expediency demands; but *counsel* needs nothing but truth and prudence. 64. With these critics in respect to panegyric, I agree; for all other writers have expressed themselves of a similar opinion; but in judicial and deliberative subjects I think that the manner of speaking is to be adapted to the matter, according to the nature of the question that may be under consideration. 65. I see that the Philippics of Demosthenes are distinguished by the same merits as the speeches which he pronounced in judicial causes; and the opinions of Cicero delivered in the senate, and his speeches to the people, exhibit a splendour of eloquence not less luminous than that which appears in his accusations and defences. Yet he speaks of the deliberative kind of oratory in this way :* *The language ought to be uniformly simple and grave, and more distinguished for studied thoughts than for studied phraseology.* 66. That there is no kind of oratory to which the application of examples is more suitable, all writers are justly agreed, as the future seems for the most part to correspond to the past, and experience is regarded as some attestation to reason.

67. As to shortness or length in such speeches, it depends, not on the nature of the subject,† but on the compass of it; for as in deliberations the question is generally more simple, so in judicial affairs it is often of less extent.‡

All these remarks he will find to be true, who shall prefer, instead of growing grey over the treatises of the rhetoricians, to read, not speeches only, but also histories; for in history the orations pronounced to the people, and the opinions delivered in councils of state, generally afford examples of persuasion and dissuasion. 68. He will find, too, that in deliberative speeches the commencements are not abrupt; that the diction in judicial pleadings is often more animated;

* Partitiones Oratoriæ, c. 27 fin.

† *Genere materiæ.*] Whether it be *demonstrative, deliberative,* or *judicial,* it is not on the particular *kind* that the length or brevity ought to depend. *Capperonier.*

‡ Quintilian blames certain teachers, who directed that *judicial* speeches should be of considerable length, and deliberative speeches shorter, whereas length is not to be measured by the kind of cause, but by the subject, and consequently *deliberative* are sometimes longer than *judicial* speeches. *Turnebus.*

that style is suited to the matter in one class as well as in the other; and that the speeches in courts of justice are sometimes shorter than those in public councils. 69. Nor will he find in them the faults into which some of our declaimers fall, who indulge in coarse invectives against those that dissent in opinion from them, and speak, on the whole, as if they were the natural adversaries of those who ask their advice; and thus exhibit themselves in the character rather of railers than of counsellors. 70. Let young men know that these remarks are written for their admonition, that they may not allow themselves to be taught otherwise than they will have to speak, and spend their time upon learning that which they will have to unlearn. But, whenever they shall be called to give counsel to their friends, to pronounce an opinion in the senate, or to offer advice if the emperor consult them, they will be taught by practice what they cannot perhaps receive on the credit of precepts.

CHAPTER IX.

Of judicial oratory; the departments of it often injudiciously increased; the proper number is five, § 1—6. The order to be observed in speaking and writing, 7—9.

1. I AM now to speak of the *judicial* kind of oratory, which is extremely varied, but lies in the two duties of *attack* and *defence*. The divisions of it, as most authors are of opinion, are five, the *exordium*, the *statement of facts*, the *proof* of what we advance, the *refutation* of our adversary, and the *peroration*. 2. To these some have added *partition*, *proposition*, and *digression*; the first two of which evidently fall under *proof*; for you must necessarily *propose* what you are going to prove, as well as *conclude* after you have proved; and, if *proposition* is a division of a cause, why is not also *conclusion*?* As for *partition*, it is only one of the duties of *arrangement*, which is a portion of oratory in general, equally pervading all its parts and the whole body of each, like invention and delivery. 3. We are therefore, not to consider partition as one division of a speech

* Which no writer on oratory has yet considered as a division of it. *Spalding.*

taken as a whole, but as belonging to every single question in it; for what question is there in which the orator may not state what he is going to say in the first place, what in the second, and what in the third; and this is the business of partition. How ridiculous is it then, that each question should be a species of proof, and that partition, which is but a species of question, should be called a part of the speech as a whole? 4. But as for *digression*, or, what has become a more common term, *excessus*, "excursion," if it be *without* the cause, it cannot be a part of the cause; and, if it be *within* the cause, it is an aid or ornament to the parts from which it proceeds; for if whatever is *in* the cause is to be called a part of the cause, why is not every *argument*, *comparison*, *common place*, *address to the feelings*, and *example*, called a part of the cause?

5. I do not, however, agree with those who, like Aristotle,* omit *refutation*, as comprehended under proof; for proof establishes, refutation overthrows. Aristotle† also makes an innovation to a certain degree, by placing next to the exordium, not the *statement of facts*, but the *proposition;* but this he does because he thinks the proposition the *genus*, and the statement of facts the *species;* and supposes that there is not always a necessity for the first, but for the second always and in all cases.

6. But with regard to the divisions which I have made, it is not to be understood that that which is to be delivered first is necessarily to be contemplated first;‡ for we ought to consider, before everything else, *of what nature the cause is; what is the question in it; what may profit or injure it;* next, *what is to be maintained or refuted;* and then, *how the statement of facts should be made.* 7. For the *statement* § is preparatory to proof, and cannot be made to advantage, unless it be first settled what it ought to promise as to proof. Last of all, it is to be considered how the judge is to be conciliated; for, until all the bearings of the cause be ascertained, we cannot know what sort of feeling it is proper to excite in the judge, whether

* Rhet. ii. 26, 3; iii. 13, 4; 17, 14.

† Rhet. iii. 13.

‡ Cic. de Inv. i. 14; de Orat. ii. 77; see also Quint. iii. 6, 12.

§ *Expositio.*] Take care not to confound it with *propositio.* It is plainly the same as *narratio.* Spalding.

inclined to severity or gentleness, to violence or laxity, to inflexibility or mercy.

8. Yet, I do not, on these accounts, agree with those who think that the exordium is to be written last;* for though it is proper that our materials should be collected, and that we should settle what effect is to be produced by each particular, before we begin to speak or write, yet we ought certainly to begin with that which is naturally first. 9. No man begins to paint a portrait, or mould a statue, with the feet; nor does any art find its completion where the commencement ought to be. Else what will be the case if we have no time to write our speech? Will not so preposterous a practice disappoint us? The orator's materials are, therefore, to be first contemplated in the order in which we direct,† and then to be written in the order in which he is to deliver them.

CHAPTER X.

A cause rests either on one point of controversy, or on several; on points of the same or of different kinds, § 1, 2. Comparison, 3, 4. We must first settle the kind of cause; what points are to be considered next, 5.

1. EVERY cause, in which there is one method for a plaintiff, and another for a defendant, consists either in a controversy about one charge or about several. The one is called *simple*, the other *complex*. A question about a *theft by itself*, or an *act of adultery by itself*, is single and independent. When there are several questions, they may be either of the same kind, as in a charge of extortion; or of different kinds, as in a charge of sacrilege and homicide at the same time. This union of charges does not now ‡ occur in public trials, because the prætor takes cognizance of each according to a fixed law, but is frequent in the causes tried before the emperors and the senate, and used to be common in those that came before the people; and disputes between private individuals often require

* Antonius, in Cicero de Oratore, mentions this as his practice.

† *Præcipimus.*] Ad ipsum Fabium pertinet. *Gesner.*

‡ Namely, since the *quæstiones perpetuæ* were instituted. See Adam's Rom. Ant. p. 116, 8vo. ed.

one judge to determine as to many different points of law. 2. Nor will there be more than two kinds of causes, even in cases where one party prosecutes the same suit, and on the same ground, against several; or two against one; or several against several; as we sometimes see occur in actions about inheritances; because, though there be several parties, the cause is still but one, unless indeed the condition * of the parties give rise to distinct questions.

3. There is, however, said to be a third kind, different from these, called *comparative;* and some consideration with regard to comparison frequently happens in some part of a cause; as when, in a case before the centumviri, there arises, after other questions, one of this kind, *which of two persons is better entitled to an inheritance?* But it seldom happens that trials are appointed in the forum † merely for that object, and only in cases of *divination*, which take place for the purpose of appointing an accuser, or sometimes between informers to decide *which of two has a better claim to a reward.*

4. To this number some have indeed added a fourth, called ἀντικατηγορία, "recrimination," or *mutual accusation;* but others think that this is comprehended under the comparative kind; and the case of reciprocal suits ‡ will be similar to it; a case which happens very frequently; and if this ought also to be called ἀντικατηγορία, (for it has no proper appellation with us,) there will be two kinds of it, one in which the parties bring the same charge against each other; the other in which they bring different charges. The case is similar with regard to demands.

5. When the nature § of the cause has been determined, we shall then have to consider, whether the fact, which is made a charge by the accuser against the defendant, is to be denied,‖

* As in the trial respecting two legitimate sons and one illegitimate, c. 6, sect. 95. *Turnebus.*

† Hence it is evident that the centumviri did not sit in the forum. *Capperonier.*

‡ When the accuser claims one thing from the defendant, and the defendant another thing from the accuser. The French term is *reconvention.* Capperonier.

§ *Genus causæ.* That is, what kind of *judicial cause* it is; for *genus* does not here refer to the threefold division into demonstrative, deliberative, and judicial *Capperonier.*

‖ *Status infitialis,* or *facti quæstio.*

or to be justified,* or to be called by another name,† or to be excluded ‡ from that particular sort of process. By this means the states of causes are determined.

CHAPTER XI.

Hermagoras's method of proceeding; the question, § 1—3. The mode of defence, 4—6. The point for decision, 7, 8. The ground or substance of the cause, 9. The question and the point for decision may be conjoined or separate, according to the nature of the cause, 10—17. Opinions of Cicero, 18—20. Hermagoras too fond of nice subdivisions, 21—25. Method of Theodorus, 26, 27. Conclusion, 28.

1. When these matters are settled, Hermagoras thinks that we must next consider what is the *question*, *the mode of defence*,§ *the point for judgment*,‖ the συνέχον,¶ or *point* "*containing*" *the accusation*, or, as some call it it, the *firmamentum*, or "*foundation*" of the cause.

Question, in its more general sense, is understood to mean everything on which two or more plausible opinions may be advanced. 2. But in regard to judicial matters, it is to be taken in two senses; one, when we say that a cause involves several questions, among which we include even those of least importance; the other, when we mean the great question on which a cause turns. It is of the second that I now speak, and it is from this that the *state* has its origin: *Has a thing been done*?** *What has been done*?†† *Has it been justifiably done*?‡‡ 3. These interrogatories Hermagoras, Apollodorus, and many other writers, call properly questions; Theodorus, as I observed,§§

* *Status qualitatis.*

† *Status definitivus.*

‡ *Status translativus.*

§ *Ratio.*] "Moyen de défense." *Gedoyn.* Ratio *est quâ id, quod factum esse constat, defenditur*; sect. 4.

‖ Judicatio.] Τὸ κρινόμενον, the point on which the judges have to pronounce a decision. *Capperonier.*

¶ *Quod continet accusationem.* Auct. ad Herenn. i. 16.

** *Status conjecturalis.*

†† *Status definitivus.*

‡‡ *Status qualitatis.*

§§ C. 6. sect. 2, 5; and see sect. 26 of this chapter.

terms them *general heads*, and the minor questions, or those dependent on them, *special heads;* as it admitted that one question may arise from another question, and that a species* may be divided into species. 4. This principal question of all, then, they call the ζήτημα.

The *mode of defence* is that process by which what is admitted to have been done is justified. To exemplify it, why should I not use that instance which almost all writers have adopted? *Orestes killed his mother:* this is admitted; he says that *he killed her justly*: the state will then be that of quality; the question, *Whether he killed her justly*: the ground of defence will be that *Clytemnestra killed her husband, the father of Orestes*: this is called the αἴτιον.

The *point for judgment*, the κρινόμενον, will be, in this case, *whether even a mother guilty of such a crime ought to be killed by her son.*

5. Some have made a distinction between αἴτιον and αἰτία, making the first signify the cause for which a trial becomes necessary, as *the killing of Clytemnestra;* the second, the ground on which the deed is justified, as *the killing of Agamemnon.* But such has been the disagreement as to the sense of these words, that some call αἰτία the cause of the trial, and αἴτιον the cause of the deed, while others use them in senses exactly contrary. Among the Latins some have adopted the terms *initium*, "commencement," and *ratio*, "reason;" some include both under the same term. 6. Cause also appears to arise from cause, αἴτιον ἐξ αἰτίου, as, *Clytemnestra killed Agamemnon because he had sacrificed their common daughter, and brought home a captive as his concubine.* The same authors are of opinion that in one question there may be several grounds of defence; as, for example, *if Orestes adds another cause for having killed his mother, namely, that he was forced to obey an oracle;* and that, whatever number of causes for the deed may be alleged, there are the same number of points for judgment; as it will also be a point for judgment *whether he ought to have obeyed the oracle.* 7. But even one alleged cause for a deed may, as I conceive, give rise to several questions and points for judgment; as in the case

* Logicians divide a species into individuals, but deny that it can be divided into other species, unless it be put in the sense of *genus*; . . . . in which sense Quintilian seems to use it here. *Regius.*

of the man, who, after he had killed his wife on catching her in adultery, subsequently killed the adulterer, who at first escaped, in the forum; for the alleged cause for the deed is but one, *He was an adulterer;* but several questions and points for judgment may arise, as *whether it was lawful to kill him at that time, or in that place.* 8. But as, when there are several questions, and all have their states, there is yet but one state in the cause to which everything is referred, so there is but one proper point for judgment, on which the decision is pronounced.

9. As to the συνέχον, (which, as I said, some call *continens*, others *firmamentum*, and Cicero * *the strongest argument of the defender, and the fittest point for adjudication,*) some regard it as that after which nothing remains to be ascertained; some, as that which is the strongest point for adjudication. 10. The reason of the deed is not a point for consideration in all causes; for what reason for the deed need be sought, when the deed is altogether denied? But when the reason of the deed is an object of consideration, they deny that the ultimate point for decision rests on the same ground as the first question; an observation which Cicero makes both in his *Rhetorica* † and his *Partitiones.*‡ 11. For, when it is said, *It was done; it was not done; was it done?* the question rests on conjecture, and the judication rests on the same ground as the question, because the first question and the ultimate decision are about the same point. But when it is said, *Orestes killed his mother; he killed her justly; no, but unjustly; did he kill her justly?* the question rests on the consideration of quality; but this is not yet the point for decision. When then will it be? After the statement, *She had killed my father; but you ought not, therefore, to have killed your mother; ought Orestes to have killed her?* here is the point for decision. 12. The fundamental point of the defence I will give in the words of Cicero § himself: "if Orestes were inclined to say that the disposition of his mother towards his father, towards himself and his sisters, towards his kingdom, and towards the reputation of his race and family, had been of such a nature that her children felt of all people most obliged to inflict punishment on her." 13. Others also use such examples as these: *the law says, let him who has exhausted his patrimony not be allowed*

* Inv. i. 14. † Inv. i. 14. ‡ C. 30. § Inv. i. 14.

to address the people; but the defendant exhausted his upon public works; and the question then is, *whether whoever has exhausted his patrimony is not to be allowed;* and the point for judgment, *whether he who has exhausted his patrimony in such a way is not to be allowed.* 14. Or the case of the Auruncan soldier,* who killed the tribune Caius Lusius, when he made dishonourable advances to him, in which the question is, *whether he killed him justly*; the ground of defence, *that he made dishonourable advances*; the point for judgment, *whether it were lawful for a person to be killed uncondemned*; *whether it were lawful for a tribune to be killed by a soldier.*

15. Some also regard the question, as in one *state*, and the point for decision in another; the question *whether Milo did right in killing Clodius*, is in the *state* of quality;† the point for decision, *whether Clodius lay in wait for Milo*, is in the *state* of conjecture.‡ 16. They say also that a cause often strays into some matter which does not properly belong to the question, and on which the decision is pronounced. I am not at all of their opinion; for the question, for instance, *whether every man who has exhausted his patrimony is forbidden to address the people*, must have its decision; and, therefore, the question and the point for decision will not be different; but there will be more than one question, and more than one point for decision. 17. In the case of Milo, too, is not the question of fact considered with reference to the question of quality? for if Clodius lay in wait, it follows that he was justly killed. But when the cause goes into some other matter, and recedes from the question which was first proposed, the question will be in the *state* in which the point for decision is.

18. Respecting these matters even Cicero is in some degree at variance with himself; for in his *Rhetorica*, as I said above,§ he has followed Hermagoras; in his *Topica*,‖ he expresses

* The story is noticed by Cicero, Pro Mil. c. 4, and Val. Max. vi. 1, 12, and is related at length by Plutarch in his Life of Marius. Plutarch calls the soldier Trebonius; Valerius calls him Caius Plotius. It is also mentioned in the third of the declamations attributed to Quintilian. - Of what country the soldier was a native no other author specifies. *Spalding.*

† Question of right.

‡ Question of fact.

§ C. 6, sect. 59.

‖ C. 25.

himself of opinion that the κρινόμενον, the point of judgment, is the consideration arising from the *state;* and in addressing Trebatius, a lawyer of his time, he calls it *the point about which the discussion is,* and terms the particulars in which that point is contained *continentia,* the "containing particulars;" *the firmamenta,* "*supports*" *as it were of the defence, without which there would be no defence at all.* 19. But in his *Partitiones Oratoriæ** he calls the *firmamentum* that which is opposed to the defence; because the *continens,* the "containing point," as it is the first thing, is advanced by the accuser; while the *ratio,* "mode of defence," proceeds from the defendant; and from the opposition of the *ratio* and *firmamentum* arises the question for decision.

Those authors, therefore, have settled the matter more judiciously and concisely, who have made the *state,* and the *containing point,* and the *question for decision,* to be all the same, and have pronounced the *containing point* to be that without which there would be no discussion. 20. In this "containing point" they seem to me to have included both allegations, *that Orestes killed his mother,* and *that Clytemnestra killed Agamemnon.* The same writers think that the *state* and the *point for judgment* always concur; and indeed any other opinion would have been at variance with their views.

21. But this studied subtilty about names of things is but ostentatious labour, and has only been noticed by me that I might not appear to have given too little consideration to the work which I have taken in hand; but a master who teaches without affectation need not split his mode of teaching into such minute distinctions. 22. Excessive subdivision is a fault into which many rhetoricians have fallen, and especially Hermagoras, a man otherwise of great sagacity, and deserving of admiration on many accounts, and censurable only for too anxious diligence, so that even what we blame in him is not unworthy of some degree of commendation. 23. But the way which I follow is far shorter, and for that reason plainer, and will neither fatigue the learner with long windings, nor enervate the body of his language by portioning it out into minute particulars.† For he who sees what point it is that comes

* C. 29.

† A mixture of metaphors unusual with Quintilian.

into controversy; what the opposite side wishes to do with regard to it, and by what means; what his own side has to do, (a particular especially to be regarded,) cannot be without a full understanding of all the matters on which I have just spoken. 24. Nor can there, we may say, be any person, not utterly devoid of sense, and a stranger to all practice in pleading, that does not know what it is that gives rise to a discussion, (which is called by the rhetoricians the *cause* and the *containing point*,) what is the question between two parties, and on what point judgment must be given; which three things are indeed all the same; for the subject of the question is that which comes into controversy, and judgment is given respecting that which is the subject of the question.

25. But we do not perpetually keep our attention fixed on these matters, but, moved with the desire of obtaining praise by whatever means, or carried away with the pleasure of speaking, we allow ourselves to wander from our subject; since matter without the cause is always more abundant than within it, for in the controversy itself there is indeed comparatively little, and everything else is beyond its limits; and, in the one case, we speak only of matters in which we have been instructed, in the other, on whatever we please. 26. Nor is it so much to be charged upon ourselves that we should discover the *question*, the *containing point*, and the *point for judgment*, (for to discover them is easy,) as that we should always look steadily to our object, or at least, if we digress from it, should recover sight of it, lest, while we are striving for applause, our arms should drop from our grasp.

27. The school of Theodorus, as I said,* distinguishes every thing into *heads;* under which term several particulars are comprehended. Under the first only the main question, the same as the *state;* under the next, other questions, which refer to the main question; under the third, the proposition with its proofs. The word is used in the same sense in which we say *caput rei est*, "it is the head of the business;" in Menander,† κεφάλαιόν ἐστι. But, in general, whatever is to be proved will be a *head*, whether of greater or lesser importance.

* See sect. 3.

† Turnebus supposes that Menander the rhetorician is meant; Gallæus and Spalding, with more probability, Menander the writer of comedies.

28. Since I have now set forth, even more circumstantially than was requisite, what is taught on these points by the writers of books on rhetoric; and since I have already* specified the several parts of judicial causes, my next book shall treat of *proems* or *exordia*.

* C. 8. sect. 1.

BOOK IV.

INTRODUCTION.

The grandsons of the sister of Domitian committed to the tuition of Quintilian; a new motive for care in composing his work. He proceeds to speak of the exordium of a speech, the statement of facts, the proof, the refutation of adverse allegations, and the peroration.

1. After finishing, my dear Marcellus Victor, the third book of the work dedicated to you, and completing about the fourth part of my task, a motive for fresh diligence, and deeper solicitude as to the judgment that I may deserve from the public, have occurred to me. Hitherto we were but comparing studies, as it were, between ourselves; and if my method of instruction was but little approved by others, I thought myself likely to be quite contented with our domestic advantage, deeming it sufficient to regulate the education of your son and my own. 2. But since Domitian Augustus has vouchsafed me the charge of his sister's grandsons,* I should not sufficiently feel the honour of his divine judgment,† if I were not to estimate the greatness of my undertaking as proportioned to this distinction. 3. For what pains can I spare in the cultivation of the morals of youth, in order that the most upright of censors‡ may have reason to approve them? Or in promoting their studies, that I may not be found to have disappointed, in this respect, the expectations of a prince most eminent, not only in other accomplishments, but also in eloquence? 4. And if no one is surprised that the greatest

* They were the sons of Flavius Clemens and Domitilla, the granddaughter of Vespasian, who was the daughter of another Domitilla, the sister of Domitian; the name of the latter Domitilla's husband is unknown. See Suet. Dom. c. 15; Dion. Cass. p. 1112, ed. Reim. *Spalding.*

† Similar adulation is bestowed by Velleius Paterculus on Tiberius, ii. 94, 104, 123. Domitian assumed to himself the titles of *Dominus* and *Deus*, as is related by Suetonius, Dom. c. 13. See also Martial, Ep. v. 81; x. 72; iii. 12, 15, 9, 10. See Barthius ad Stat. Sylv. i. 1, 62. *Spalding.*

‡ *Sanctissimus censor.*] Domitian was the first of the Roman emperors that assumed the title of supreme censor; see Dion. Cass. lib. lxvii. p. 1104, ed. Reim. On some coins he is styled *censor perpetuus.*

poets have often invoked the Muses, not only at the beginning of their works, but, on advancing in their course, and arriving at some point of great importance, have renewed their addresses, and used as it were fresh solicitations, 5. I myself shall surely be pardoned also, if I now do that which I omitted to do when I entered on my subject, and call all the deities to my aid, and especially him than whom there is no deity more auspicious or more peculiarly favourable to learning: in order that he may inspire me with ability proportioned to the expectation which he has raised of me, may propitiously and kindly support me, and render me in reality such as he has supposed me to be.

6. For such devotional feeling, this, though my greatest, is not my only reason; for besides, as my work advances, the parts on which I am entering are more important and more difficult than those which have preceded them. It is now to be shown, in the next place, what is the *process of judicial causes*, which are extremely numerous and diversified; what is the purpose of the *exordium;* what is the proper form of a *statement of facts;* what constitutes the *force of proofs*, either when we confirm our own assertions, or overthrow those of our adversary; and what is the power of a *peroration*, either when the memory of the judge is to be refreshed by a short recapitulation, or when, what is far the most effective, his feelings are to be excited. 7. On these particulars, some authors, as if they dreaded the weight of the whole in a body, have preferred to write separately, and even thus have published several books on each of them; while I, having ventured to embrace them all, see before me a labour almost boundless, and am oppressed with the very thought of the task which I have undertaken. But, as I have begun, I must persevere; and, if I fail in strength, must nevertheless proceed with courage.

CHAPTER I.

Etymology of the word proem, § 1—3. An erroneous practice in the schools and in the forum, 4. Object of the proem or exordium, 5. How the good will and attention of the judge may be gained by allusion to different characters concerned in the cause, 6—19. Farther observations on the same subject, 20—27. Difference between the exordium and the conclusion, 28, 29. Matters connected with the characters and the cause to be considered, 30—32. Solicitude to be shown by the pleader; brevity to be promised; accurate division of matter to be made, 33—36. To conciliate the judge must be the pleader's constant object throughout his speech, 37—39. Five kinds of causes, 40—41. Some make two purposes of a proem, proposition and insinuation; the latter more easy for the advocate than for his client, 42—49. An unnecessary rule of the Apollodoreans, 50, 51. Points to be regarded in the exordium, 52—60. The speaker's memory must not fail him in it, 61. Its length must be proportioned to the cause, 62. Whether apostrophe, and other figures of speech, may be used in it, 63—71. Whether a formal exordium is always necessary, 72—75. Mode of transition to the statement of facts, 76—79.

1. That which is called the *beginning*, or *exordium* in Latin, the Greeks seem with greater reason to have termed the προοίμιον: for by our writers is signified only a *commencement*, but the Greek rhetoricians plainly show that this is the part preliminary to the entrance on the subject on which the orator is to speak. 2. For whether it be because οἴμη signifies a *tune*, and players on the lyre * have called the short prelude that they execute, for the purpose of conciliating favour, before they enter upon the regular contest for the prize,† a *proœmium*, orators, in consequence, have distinguished the address which they make to gain the good will of the judges, before they commence their pleading, by the same appellation; 3. or whether, because the Greeks call a *way* οἶμος, it became a practice to call that a *proœmium* which precedes the entrance on a subject; it is certainly the *proem*, or *exordium*, that produces a good effect on the judge before he understands what the cause is; and we act erroneously in the schools, in using exordia of such a nature

* Aristot. Rhet. iii. 14, 1.

† *Legitimum certamen.*] Some read *carmen*, observes Rollin. Spalding says that he met with *carmen* in the text only of one manuscript, but saw it in the margin of some others. "It is the ἀγὼν that is meant, in which they contended for the honour and reward of skill. Examples are numerous; see, *e. g.* Sueton. Ner. c. 12, 22, 23." *Gesner*

as if the judge was thoroughly acquainted with the cause. 4. The liberty taken in this respect arises from the circumstance that the usual idea of the cause * is given previous to the commencement of the declamation. Such kind of exordia may be adopted indeed in the forum in *second* processes, but in a *first* process † seldom or ever, unless we chance to plead before a judge to whom the matter has become known from some other quarter.

5 In giving an exordium at all there is no other object but to prepare the hearer to listen to us more readily in the subsequent parts of our pleading. This object, as is agreed among most authors, is principally effected by three means, by securing his *good will* and *attention*, and by rendering him *desirous of further information*; not that these ends are not to be kept in view throughout the whole pleading, but because they are pre-eminently necessary at the commencement, when we gain admission as it were into the mind of the judge in order to penetrate still farther into it.

6. As to *good will*, we either gain it from *persons* connected with the cause, or have it from the *cause* itself. But in respect to *persons*, regard is not to be had to three only, (as most rhetoricians have supposed,) the *prosecutor*, the *defendant*, and the *judge*; for the exordium sometimes takes its complexion from the character of the pleader; and though he speaks sparingly and modestly concerning himself, yet, if he be deemed *a good man*, much influence, in reference to the whole cause, may depend on that consideration; for he will then be thought to bring to the support of his party not merely the zeal of an advocate, but almost the testimony of a witness. 7. Let him be regarded as coming to plead, therefore, from being induced by obligations of kindred or friendship, or above all, if it be possible, by respect for his country, or for some strong considerations of precedent. This, without doubt, is still more to be observed by the parties

* *Illa velut imago litis.*] That is, the *thema*, which is prefixed to the declamation, as in those of Seneca and Quintilian. See iv. 2, 28; vii. 1, 4. *Spalding.*

† *Secundis actionibus—primis quidem rarò.*] *Secundæ actiones* are such as the *libri secundæ actionis* against Verres, when, as the trial could not be brought to an end at once, it was adjourned for three days. Not that this *secunda actio* really took place; but such is the way in which Cicero represents the case. *Primæ actiones* are mentioned xii. 9, 16. *Spalding.*

themselves, so that they may seem to go to law from some important and honourable motive, or even from necessity.

8. But as the authority of the speaker becomes thus of the highest efficacy, if, in his undertaking the business, all suspicion of meanness, or hatred, or ambition, be far removed from him, so it is a sort of tacit commendation to him, if he represents himself as weak, and inferior in ability to those acting against him, a practice which is adopted in most of the exordia of Messala. 9. For there is a natural feeling in behalf of those oppressed; and a conscientious judge most willingly listens to an advocate whom he does not suspect of any design to draw him from justice. Hence arose that dissembling of the speakers of antiquity to conceal their eloquence, so extremely different from the ostentation of our times.

10. We must also take care not to appear *insolent, malignant, overbearing,* or *reproachful* towards any man or body of men, especially such as cannot be wounded without exciting an unfavourable feeling in the judge. 11. That nothing should be said against the judge himself, not only openly, but nothing even that can be understood as adverse to him, it would be foolish in me to advise, if such things did not sometimes take place.

The character of *the advocate for the opposite party* may sometimes afford us matter for an exordium; if we speak of him sometimes with honour, making it appear that we fear his eloquence and influence, so as to render them objects of suspicion to the judge; or sometimes, though very rarely, with contempt, as Asinius Pollio, in pleading for the heirs of Urbinia,* enumerates the choice of Labienus as advocate for the opposite party among the proofs of the badness of their cause. 12. Cornelius Celsus denies that such remarks constitute exordia, as having no relation to the cause; I, however, am led to form a contrary opinion, not only by the authority

* To the enmity between Asinius Pollio and Labienus I have alluded on i. 5, 8. The Urbinian case, as far as it can be understood from two other passages in which it is noticed, (vii. 2, 5, 26,) was of the following nature: Certain persons, who, resting their claims either on a will or on relationship, sought to get possession of the property of Urbinia, were opposed by Clusinius Figulus, whom the claimants declared to be a slave, his real name being Sosipater; and whose character Pollio tried to depreciate by remarking on his connexion with a man so unprincipled as Labienus. Comp. xii. 1, 13. *Spalding.*

of the greatest authors, but because I consider, for my own part, that whatever relates to the pleader of the cause relates to the cause itself; since it is but natural that judges should be more inclined to believe those whom they are more inclined to hear.

13. As to the character of the *prosecutor*, it may be treated in various ways; sometimes his worth may be asserted, sometimes his weakness commended to notice. Sometimes a statement of his merits may be proper, when a pleader may speak with less reserve in praise of another's worth than he would in that of his own. Sex, age, condition, are of great influence, as in the case of women, old men, or wards, when they plead in the character of wives, parents, or children. 14. Commiseration alone, indeed, has effect even upon a right-minded judge. But such matters are to be lightly touched, and not exhausted, in an exordium.

The character of the *adversary* is commonly attacked with references to topics of a similar nature, but directed against him; for on the powerful envy must be shown to attend, on the mean and abject, contempt; on the base and criminal, hatred; three qualities that have great power in alienating the favour of the judges. 15. Nor is it enough merely to state such particulars, (for this is in the power even of the ignorant,) but most of them must be magnified or extenuated, as may be expedient; for to give effect to them is the business of the orator; the mere expression of them may be inherent in the cause itself.

16. The favour of the *judge* we shall conciliate, not merely by offering him praise, (which ought indeed to be given with moderation, though it is to be remembered at the same time, that the privilege of offering it is common to both parties,) but by turning his praises to the advantage of our cause, appealing, in behalf of the *noble* to his dignified station, in behalf of the *humble* to his justice, in behalf of the *unfortunate* to his pity, in behalf of the *injured* to his severity; and using similar appeals in other cases. 17. I should wish also, if possible, to know the character of the judge, for, according as it may be violent, gentle, obliging, grave, austere, or easy, it will be proper to make his feelings subservient to our cause where they fall in with it, and to soften them where they are repugnant to it.

18. But it sometimes happens, also, that he who sits as

judge is either our enemy or the friend of our opponent, a circumstance which ought to claim the attention of both sides but more particularly, perhaps, of that to which the judge seems to incline. For there is sometimes, in unprincipled judges,* a foolish propensity to give sentence against their friends, or in favour of parties with whom they are at enmity, and to act unjustly that they may not seem to be unjust.

19. Some have been judges, too, in their own causes. I find, for instance, in the books of observations published by Septimius,† that Cicero was engaged in a cause of that nature; and I myself pleaded the cause of Queen Berenice‡ before that queen herself. In this case the mode of procedure is similar to that in those which I have just mentioned; for he who pleads in opposition to the judge exaggerates the confidence of his client, and he who pleads in his favour expresses apprehension of feelings of delicacy on his part.§ 20. Opinions, moreover, such as the judge may appear to have brought with him in favour of either party‖ are to be overthrown or established. Fear¶ is sometimes to be removed from the mind of the judge; as Cicero, in his speech for Milo, strove to convince the judges that they were not to think the arms of Pompey arrayed against them; and sometimes to be held out to

* *Pravis judicibus hic ambitus.*] Aldus reads *pravus.*

† To this Septimius and his work no other writer appears to make any allusion. . . . The cause in which Cicero was engaged cannot have been like any of those of his pleading with which we are acquainted, as those of Ligarius, Deiotarus, Marcellus, (to which Turnebus compares it,) for those were causes of Cæsar himself, before whom they were pleaded. *Spalding.*

‡ She with whom Titus was in love, and to whom he even promised marriage, but was obliged to send her away from Rome against his will and her own; Suet. Tit. c. 7. She was the daughter of the elder Agrippa, king of Judæa, and widow of Herod, her own uncle, king of Chalcis in Syria. As she twice resided at Rome, first in the reign of Vespasian, and afterwards in that of Titus, when she attempted to revive that prince's affection for her, she might have had legal disputes from various causes, but I find no allusion to any elsewhere. *Spalding.*

§ The orator who pleads against the judge, boasts of the confidence of his party in having nothing to fear from the judge, though he is also their opponent. The orator who is on the judge's side, intimates his fear that the judge, from false delicacy, may give sentence against himself, though his cause is just. *Rollin.*

‖ *Præcipuè.*] *Præ alterâ parte,* though he ought to be strictly impartial. *Spalding.*

¶ See vi. 1, 13. *Almeloveen.*

them, as Cicero acted in his pleadings against Verres.* 21. But of the two modes of producing fear in the judges, the one is common and well received, when we express concern, for example, *that the Roman people may not think unfavourably of them;* or *that their privilege of sitting as judges may not be transferred from them to another body;*† but the other is unusual and violent, when the speaker threatens the judges with a charge of bribery; a threat which it is certainly safer to address to a larger body of judges than to a small one, for the bad are alarmed and the good pleased, but to a single judge I should never recommend it to be used, unless every other resource has failed. 22. But should necessity drive us to it, it is no part of oratorical art, any more than to appeal from the judgment of the tribunal, (though an appeal is often advantageous,) or to impeach a judge before he gives sentence; for one who is not an orator may threaten and denounce.

23. If the nature of the cause itself afford us topics for conciliating the judge, it will be proper, above all, that such of them be selected for introduction into the exordium as may appear most favourable to our object. On this head Virginius‡ is in error, for he says Theodorus is of opinion that from every question in the cause some thought may be selected for the exordium. 24. Theodorus does not say this, but merely that the judge is to be prepared for the most important points; a precept in which there would be nothing objectionable, if it did not enjoin that as a general rule which every pleading does not admit, and which every cause does not require. For when we rise to open the case on behalf of the prosecutor, while it is still unknown to the judge, how shall we bring forward thoughts from every question in it? Surely the subject must previously be stated. Let us admit that some questions may then be brought forward, (for so the form of our pleading sometimes requires,) but must we, therefore, bring forward all the most important ones, that is, the whole cause? If so, the statement of facts will be dispatched in the exordium.

* The first *actio* against Verres, which is wholly in place of an exordium, as it is indeed called by Asconius Pedianus, being preliminary to the examination of the witnesses. *Spalding.*

† From the senators to the knights, or from the knights to the senators; changes which were several times made. *Capperonier.*

‡ III. 1, 21.

25. Or if, as frequently happens, the cause is somewhat difficult, should we not try to gain the goodwill of the judge in other parts of the pleadings, and not present the bare roughness of every point to his mind before we have attempted to incline it in our favour? If such matters were always rightly managed at the opening of a speech, there would be no need of any formal exordium. 26. At times, accordingly, some particulars, which may be of great effect in conciliating the favour of the judge, may be previously* introduced, and not without advantage, in the commencement.

What points, again, are likely to gain us favour in causes, it is not necessary for me to enumerate; for they will be manifest to the pleader, when he understands the nature of a cause; and all particulars, in so great a variety of suits, cannot possibly be specified. 27. But as it is for the service of a cause to *discover* and *amplify* its favourable points, so it is expedient to *refute*, or at least to *extenuate*, whatever is prejudicial to it. Compassion may also spring from the nature of our cause, if we have suffered, or are likely to suffer, any severe misfortune.

28. Nor am I inclined, as some are, to think that an exordium differs from a peroration only in this respect, that in a peroration is narrated what has gone before, and in an exordium is set forth what is to come. The difference rather lies in this, that in the introduction the kind feelings of the judge should be touched, but cautiously and modestly; while in the peroration we may give full scope to the pathetic, we may attribute fictitious speeches to our characters, and evoke the dead and produce their children;† attempts which are not made in exordia.

29. But as to those feelings of pity, which I mentioned above,‡ it is necessary not only to excite them in our favour in the exordium, but to turn away the effect of them from our opponent; and as it is for our advantage that our lot should be thought likely to be deplorable if we should be defeated, so is it that the pride of our adversary should be apprehended as likely to be overbearing if he should conquer.

* *Interim.*] "In the mean time," *i.e.*, before proceeding to the body of the speech.

† *Pignora eorum.*] We should read *reorum*, which Spalding first conjectured, and afterwards found in the passage as cited by Cassiodorus in Rhetoribus Pithœanis, p. 333.

‡ I suppose that he refers to sect. 27. *Spalding.*

30. But exordia are often taken from matters which are not properly concerns of our clients or their causes, but which yet in some way *relate to both of them*. With the *persons* of our clients are connected not only their wives and children, to whom I have previously alluded,* but their *relatives* and *friends*, and sometimes countries and cities, and whatever else may be injured by the failure of those whom we are defending. 31. To the cause, among external circumstances, may be referred the *occasion*, from which is derived the exordium in behalf of Cœlius;† the *place*, from which is taken that in behalf of Deiotarus;‡ the *appearance of things*, whence that in behalf of Milo;§ *public opinion*, whence that against Verres;‖ and in short, that I may not specify everything, *the report respecting the trial, the expectation of the people;* for, though none of these things form part of the cause, they yet have a connexion with the cause. 32. Theophrastus adds that an exordium may be derived from the *form of the pleading*, as that of Demosthenes for Ctesiphon appears to be, when he entreats to be allowed to speak as he himself may think most proper, rather than according to the mode which the prosecutor has laid down in his charge.¶

33. Confidence often suffers from being thought to partake of presumption. But artifices which procure us favour, and which, though common to almost all pleaders, are not to be neglected, even if for no other reason than that they may not be first employed against us, are to *wish*, to *express detestation*, to *enterat*, to *show anxiety;* because if a cause appears to be brought forward which is new, important, atrocious, and of consequence in regard to precedent, it generally renders the judge extremely attentive, and especially if he is moved by concern for himself or his country; and his feelings must then be excited by hope, fear, admonition, sup-

* I consider the allusion to be to sect. 28, not, as Gesner thinks, to sect. 13. *Spalding.*

† Pro Cœl. c. 1, *Miretur quod diebus festis, &c.*

‡ C. 2. *Moveor etiam loci ipsius insolentiâ, &c.*

§ C. 1. *Hæc novi judicii nova forma, &c.*

‖ Act. pr. c. 1. *Inveteravit enim jam opinio, &c.*

¶ Æschines had solicited the judges not to allow Demosthenes to indulge in any irregularity, but to oblige him to reply to the charges in the same order in which he himself had stated them. Hence Demosthenes took his exordium. *Turnebus.*

plication, and even by false representations,* if we think that they will be of service to us.

34. It also has effect in securing the attention of the audience, if they think that we shall not detain them long, or enter upon matters foreign to the subject. Such attention in itself makes the judge desirous of information, and especially if we can state, briefly and clearly, the substance of the matter of which he has to take cognizance; a method which Homer and Virgil have adopted at the commencement of their poems. 35. As to the length of it, it should be such as to resemble a proposition rather than an exposition, and show, not how every particular in the cause occurred, but on what particulars the pleader intends to speak. Nor do I know that a better example of such a summary can be found than that of Cicero in his speech for Aulus Cluentius: 36. "I have remarked, judges, that the whole speech of the accuser is divided into two parts;† of which one appeared to me to rest, and principally to depend, on the odium, now long prevalent, arising from the judgment of Junius, the other to touch, for form's sake, timidly and diffidently, on the question of the charge of poisoning, though it is on this point that the present inquiry has according to law been instituted." All this, however, is more easy for the defender than the prosecutor, because by the one the judge is merely to be warned, by the other he must be informed.

57. Nor shall any authors, however eminent, induce me to entertain the opinion that I may sometimes dispense with rendering the judge attentive and willing to listen. (Not that I am ignorant of the reason which is alleged by them, namely, that it is for the advantage of a bad cause that its nature should not be understood; but the truth is, that the judge's ignorance of a cause does not arise from inattention on his

* *Vanitate.*] That is *mendacio*, as Capperonier has rightly explained it. Badius, Rollin, and Gedoyn, fixing their thoughts unhappily on their own language, understand it in the sense of *ambitione judicis*; and I am surprised to see that Gesner is similarly inclined. Compare xi. 2, 22. . . . How Quintilian can uphold his orator, who is to be *a good man*, in this *vanitas*, I leave for others to consider. *Spalding.*

† Cluentius had been accused, first of having procured the condemnation of Oppianicus by bribing the judges, or rather jury, in the trial before Junius; secondly, of having given poison to Oppianicus. *Turnebus.*

part, but from error into which he is led.) 38. Suppose that our adversary has spoken, and has perhaps produced conviction in the judge; we require that his opinion should be changed, and it cannot be altered unless we render him attentive and willing to listen to what we are going to say. How are we to act then? I consider that some of our adversary's arguments must be weakened, or depreciated, and noticed with a sort of contempt, in order to lessen the strong feeling of favour which the judge has for the opposite party; a method which Cicero adopted in pleading for Ligarius. 39. For what else was the object of that irony,* but that Cæsar might be induced to give less attention to the cause, as presenting no extraordinary features? What is the purpose of the speech for Cœlius, but that the charge might seem less important than it was thought to be?

But of the rules which I have proposed, it is evident that some are applicable to one sort of causes, and some to another. 40. The kinds of causes,† too, most rhetoricians pronounce to be five, the *honourable*, the *mean*, the *doubtful* or *ambiguous*, the *paradoxical*, and the *obscure;* that is, the ἔνδοξον, the ἄδοξον, the ἀμφίδοξον, the παράδοξον, and the δυσπαρακολούθητον. Some think that to these it is proper to add the *base*, which some comprehend under the mean, others under the paradoxical. 41. What they call *paradoxical*, is something that is brought to pass contrary to human expectation. In an *ambiguous* cause we should make it our chief object to render the judge *well affected*, in an *obscure* one *desirous of information*, in a *mean* one *attentive*. As for an *honourable* cause, it has sufficient attraction in itself to conciliate; in one that is *paradoxical* or *base*, there is need of palliation.

42. Hence some divide the exordium into two parts, the *introduction* and the *insinuation;* in order that in general, in the introduction, there may be a straightforward request for the judge's goodwill and attention; but, as this cannot be made in a dishonourable cause, some insinuation may then be directed cautiously into his mind, especially if the aspect of

* Comp. sect. 70.

† This has reference only to the *judiciale genus causarum*, of which these five *genera* are in reality *species;* they are mentioned by Cicero de Inv. i. 15; Fortunatianus, p. Pith. 60; Sulp. Victor, p. ejusd. 243. *Spalding.*

the cause is not even plausible, either because the ground of it is dishonourable in itself, or because it is disapproved by the public; or if, again, the cause suffers from the appearance of a patron or a father against a client or a son,* which renders it unpopular, or from that of an old or blind man, or an infant, which excites feelings of compassion. 43. What arts we must adopt to counteract these difficulties, rhetoricians teach us at great length, imagining cases for themselves, and treating them according to the forms of judicial processes; but such peculiarities, as they spring from varieties of causes of which we cannot give rules as to every species, unless they be comprehended under general heads, might be enumerated to infinity. 44. For every difficulty a remedy must therefore be sought from the peculiar nature of the case. Let it, however, be laid down as a general rule, that we should turn from that which is prejudicial to us to that which is favourable. If we are perplexed about our cause, the character of our client may aid us; if about our client, the nature of our cause; if nothing that can be a support to us, presents itself, we may seek for something to damage our adversary; for as it is our greatest wish to gain more favour than our adversary, so it will be our next object to incur less dislike. 45. In regard to offences which cannot be denied, we must endeavour to make them appear less heavy than has been represented, or to have been committed with another intent, or to have no reference to the present question, or to be capable of being expiated by repentance, or to have been already sufficiently punished. Such allegations it is easier for the advocate to make, therefore, than for his client; for he can praise without incurring the charge of conceit, and may sometimes even blame to advantage. 46. He will sometimes, accordingly, pretend that he is moved with concern, (like Cicero in his speech for Rabirius Posthumus,) in order to gain the ear of the judge, and will assume the sincerity of a person who feels the truth of what he says with a view to gain greater belief when he proceeds to justify or disprove the charges against his client. We are, therefore, to consider first of all whether we should adopt the

* If a client pleads against his patron, or a son against his father, the very appearance and presence of either the patron or the father on the trial, (to say nothing of the unfavourable feeling among the audience), discourages the client or the son. *Rollin.*

character of a party in the suit or of an advocate, whenever either is in our power. In the schools, indeed, there is free choice; but in the forum, it is rare that a person is competent to plead his own cause. 47. A youth learning to declaim, however, ought to plead causes, such at least as chiefly depend on the pathetic, in the character of the parties themselves; for the feelings cannot be transferred; and the emotion received from another person's mind is not communicated with the same force as that which proceeds from our own. 48. For these reasons there is thought to be need of *insinuation*, if the pleading of our opponent has taken effect on the mind of the judges, or if we have to address them when their attention is fatigued; from the one of which difficulties we shall extricate ourselves by promising to bring our own proofs, and by eluding the arguments of the adversary, and from the other by giving hopes that we shall be brief, and by recurring to those other means by which I have shown* that the judge may be rendered attentive. 49. A little pleasantry, too, seasonably introduced, refreshes the minds of the judges, and gratification, from whatever quarter produced, relieves the tedium of listening. Nor is the art of anticipating what is likely to be said against us without its use; as Cicero says† that *he knew some had expressed surprise that he, who had for so many years defended many, but prosecuted none, should now appear as the accuser of Verres;* and then shows that the accusation of Verres is a defence of the allies. This rhetorical artifice is called *prolepsis*, or "anticipation." 50. As it is useful at times, it is now almost constantly adopted by some declaimers, who think that they must never begin but with something contrary to their real object.

Those who follow Apollodorus deny that there are only the three ways which I have specified‡ of propitiating the judge, and enumerate various other sorts of them, almost infinite in number, derived from *the character of the judge*, from *notions formed of circumstances relating to the cause*,§ from *opinions entertained of the cause itself*, and from the elements of which every cause is composed, as *persons*, *deeds*, *words*, *motives*

* Sect. 33, 34.

† At the commencement of the *Divinatio in Q. Cæcilium.*

‡ Sect. 5.

§ Comp. sect. 31.

seasons, places, occasions, and the like. 51. That advantage may really be taken of these particulars, I readily admit, but consider that they all come under the three heads specified; for if I make the judge *propitious, attentive,* and *ready to be informed,* I find nothing more that I need desire; as the very fear,* which appears to have the greatest influence independent of these particulars, both secures the attention of the judge, and deters him from showing partiality to the opposite side.

52. Since it is not sufficient, however, to indicate to learners what enters into the nature of an exordium, without instructing them also how an exordium may be best composed, I add that he who is going to speak should reflect *what* he has to say, *before whom, for or against whom, at what time or place, amidst what concurrence of circumstances, under what prepossessions of the public; what opinion it is likely that the judge has formed* previous to the commencement of the pleadings, and what the speaker has to *desire* or *deprecate.* Nature herself will lead him to understand what he ought to say first. 53. But now they think anything with which they happen to start, an introduction, and whatever occurs to them, especially if it be some thought that pleases them, serves them, forsooth, for an *exordium.* Many points, doubtless, may be introduced into the exordium which are derived from other parts of the cause, or which are common to the exordium with other parts; but nothing will be said preferably in any particular part, but that which cannot be said equally well in any other part.

54. There is much attraction in an exordium which derives its substance from the pleading of our opponent, for this reason, that it does not appear to have been composed at home, but to be produced on the spot, and from the suggestion of the subject; it increases the reputation of the speaker for ability, from the facility which he exhibits, and, from wearing the appearance of a plain address, prompted by what has just been said, gains him the confidence of his audience; insomuch that, though the rest of his speech may be written and carefully studied, the whole of it nevertheless seems almost entirely extemporaneous, as it is evident that its commencement received no preparation at all. 55. Very frequently, too, an exordium will be pleasing from a certain modesty in th

* Sect. 20, seqq. *Spalding.*

thoughts, style,* tone, and look of the speaker, so far that even in a cause which hardly admits of controversy, the confidence of the orator ought not to display itself too plainly; for the judge generally detests assurance in a pleader, and, as he knows his own authority, tacitly looks for a due portion of respect. 56. We must take no less care also, that we may not excite suspicion in the exordium; and therefore no appearance of study ought to be shown in it, because all art on the part of the orator seems to be directed against the judge. 57. But to avoid the suspicion of using art is the achievement of the highest art; a precept which is given by all writers on rhetoric, and with the utmost propriety; yet the present practice, from the state of things in our times, is somewhat at variance with it; because on certain trials, especially capital ones, and those before the centumviri,† the judges themselves require to be addressed in careful and formal speeches,‡ and think themselves slighted if study is not apparent in every pleading before them, desiring not only to be instructed but to be pleased. 58. Moderation in such a practice is difficult,§ but it may be so far observed that we may give our oratory the appearance of carefulness and not of cunning.

Of the old precepts this still remains in force, that *no unusual expression, no highly audacious metaphor, nothing borrowed from what is obsolete and antiquated, or from poetic license, should appear in the exordium.* 59. For we are not as yet admitted to full freedom of speech, and the attention of the audience, being still fresh, keeps us under restraint, but when their minds are propitiated and warmed, greater liberty will be tolerated, and especially when we have entered on those moral topics‖ of declamation whose natural fertility prevents the boldness of an expression from being observed amid the splendour of beauty that surrounds it.¶

60. Our style in the exordium ought not to resemble that of the argumentative, or sentimental, or narrative parts of our

* *Compositionis.*] Sc. verborum. *Capperonier.*
† See iii. 10, 3.
‡ Comp. iv. 2, 122; v. 10, 115.
§ Comp. iv. 1, 9; xii. 9, 5.
‖ *Locos.*] See. ii. 1, 11; 4, 22.
¶ See c. 2, sect. 117; and ix. 4, 29.

speech. Nor should our manner be too prolix * or circumlocutory, but should wear the appearance of simplicity and unaffectedness, not promising too much either in words or look. A mode of delivery in which all art is concealed, and which, as the Greeks say, is, ἀνεπίφατος, "unostentatious," steals often most successfully on the mind of the hearer. But such points are to be managed according to the way in which it is expedient that the minds of the judges should be impressed.

61. To be confused in memory, or to lose our fluency of speech, has nowhere a worse effect than at the commencement, as a faulty exordium may be compared to a countenance disfigured with scars; and that pilot is surely one of the worst who runs his vessel aground as it is leaving the harbour. As to the length of an exordium, it must be regulated by the nature of the cause. 62. Simple causes require but a short introduction; such as are perplexed, suspicious, or unpopular, demand a longer one. But those who have prescribed laws for all exordia, saying that they must be limited to four sentences,† make themselves ridiculous. Yet immoderate length in the introduction is no less to be avoided, lest the speech should seem to have a head of disproportionate size, and lest that which ‡ ought to prepare the hearer should weary him.

63. The figure by which the orator's address is turned from the judge, and which is called *apostrophe*, some rhetoricians wholly exclude from the exordium, being doubtless led by some show of reason to form such an opinion on this point; for it must be admitted that it is most natural for us to address ourselves chiefly to those whose good will we desire to secure. 64. At times, however, some striking thought § may be neces-

* *Oratio—deducta.*] Stating matters in a long series, as *deducere carmen* in Ovid. *Burmann.*

† *Intra quatuor sensus.*] That is, four sentences; διανοίαις, expressed in as many periods; four propositions of reasonable length. *Capperonier.* Something of this kind must have appeared in books on rhetoric in Quintilian's time. *Spalding.*

‡ Spalding retains *quo* in his text, but proposes *quod* in his note, to which I have made my version conformable.

§ *Sensus aliquis.*] That is, *sententia quædam eximia*, some remarkable observation; such as the Greeks mean by *νόημα*, and the Italians by *concetto.* Capperonier.

sary to our exordium,* and this may be rendered more lively and spirited if directed to another person. Should this be the case, by what law, or by what superstitious regard for rules, should we be prevented from giving force to our conceptions by this figure? 65. Writers of books on the art, indeed, do not proscribe the figure as being illicit, but because they do not think it advantageous; and thus, should the advantage of using it be proved, we shall be forced to adopt it for the same reason for which we are now prevented. 66. Demosthenes† directs his remarks to Æschines in his exordium; Cicero, in commencing his speech for Ligarius, addresses himself to Tubero, and, in the beginning of those for several other persons, speaks to whomsoever he pleases. 67. His exordium to the speech for Ligarius, indeed, would have been much more languid, if it had been in any other form; as the reader will better understand, if he directs to the judge all that most spirited part which is in this form, *You have, therefore, Tubero, that which is most to be desired by an accuser*, etc., for then the address would seem really *turned away*,‡ and the whole force of it would be lost if we were to say, *Tubero therefore has that which is most to be desired by an accuser.* 68. In the first method the orator urges and presses on his opponent; in the second he would merely make a statement. The case would be similar with the passage in Demosthenes, if you alter the turn of it. Has not Sallust, too, adopted an exordium directly addressed to Cicero, against whom he was pleading, starting with the words, *I should bear your reproaches, Marcus Tullius, with concern and indignation*, etc.?§ The same form has been chosen by Cicero in his attack on Catiline, *How long then will you abuse our patience*, etc.? 69. And that we may not wonder at the use of the apostrophe, Cicero, in his defence of Scaurus, who was accused of bribery, (a pleading

* *Hoc procœmio.*] In hoc ipso, de quo jam agimus, procœmio. *Spalding.*

† P. 228, extr. ed. Reisk.

‡ *Verè aversa videatur oratio.*] A play, as Spalding observes, on the word *apostrophe.*

§ These words are found at the commencement of the declamation against Cicero, falsely attributed to Sallust. It is probable that the author of that declamation, finding the words in Quintilian, pressed them, as well as those in ix. 3, 89, *O Romule Arpinas*, into his own service. See my translation of Sallust, p. 276.

which is found in his commentaries,* for he defended Scaurus twice,) employs the *prosopopeia*,† making another person speak for his client; and in his oration for Rabirius Posthumus,‡ and in that also for Scaurus when accused of extortion, he introduces *examples* in the exordium; while in his speech for Cluentius he commences, as I have previously observed,§ with *partition*.

70. But these figures are not, because they may sometimes be used effectively, to be used perpetually, but only whenever reason prevails over rule; as we may sometimes employ the simile, provided it be short, the metaphor, and other figures, (which the timid and careful teachers of rhetoric prohibit,) unless that noble specimen of irony in the speech for Ligarius, which I noticed a little above,‖ gives offence to any reader. 71. Other faults in exordia they have exposed with greater justice. That sort of exordium which may be adapted to several causes is called *vulgar*;¶ (a species which, though regarded with little favour, we may occasionally adopt with advantage, and which is not always avoided by the greatest orators;) that which our opponent may use as well as ourselves, is termed *common*; that which our opponent may turn to his own purpose, is designated as *commutable*; that which has no just connexion with the cause, is styled *detached*; that which is derived from some other subject, *transplanted*; some, again, are blamed as *long*, or *contrary to rule*. Most of these faults, however, are not peculiar to the exordium, but may be found in any or every part of a speech.

72. Such are the points to be noticed with respect to the exordium, as often as there may be occasion for one; which is not always the case, for it is sometimes superfluous; as when the judge, for instance, is sufficiently prepared without it, or

* See x. 7, 30. The other trial of Scaurus was for extortion. Cicero's defence of him on that occasion was published. Scaurus was acquitted of extortion, and found guilty of bribery. See Dr. Smith's Dict. of Biog. and Mythol.

† He introduces in his exordium some one speaking for the accused; a figure even more bold than the apostrophe. The commentaries mentioned in the text are entirely lost. *Spalding.*

‡ C. 1, extr.

§ Sect. 36.

‖ Sect. 39.

¶ See ad Herenn. i. 7 extr.; Cic. de Inv. i. 18; Quint. v. 13, 34. *Spalding.*

when the subject itself requires no introduction. Aristotle,* indeed, denies that it is ever necessary in addressing able judges. Sometimes, too, we cannot employ an exordium, even if we wish; as when the judge is much occupied, when time is short, or when a superior authority † obliges us to enter at once upon our subject. 73. Sometimes, on the other hand, the nature of an exordium is found in other parts of the speech;‡ for in the statement of facts, or in the course of our arguments, we occasionally ask the judges to attend, or to be favourable to us; a practice by which Prodicus thought that they might be roused when disposed to sleep. 74. The following passage is an example: *Then Caius Varenus,*§ *he who was killed by the slaves of Ancharius, (to this point, judges, pay, I beseech you, the most careful attention,)* etc. If the cause, moreover, consists of many heads,‖ a proper introduction must be prefixed to each head: as, *Listen now to what follows;* or, *I now proceed to the next particular.* 75. But even among the proofs themselves many observations occur that serve the purpose of an introduction, such as Cicero makes in his speech for Cluentius,¶ when about to speak against the censors, and in that for Muræna,** when he makes an apology to Servius. But this practice is so common as to make it unnecessary to establish it by examples.

76. Whether, when we have used an exordium, we afterwards commence a statement of facts, or proceed at once to produce our proofs, that point ought to be stated *last* in our introduction, with which the commencement of the sequel will most naturally unite itself. 77. But the affectation in the schools, of disguising the transition in some striking thought,

* Rhet. iii. 14, 8. See Quint. xii. 10, 52.

† If the emperor, for instance, should be judge. *Spalding.*

‡ *Non exordio.*] These words, observes Spalding, are to be taken as one.

§ Comp. iv. 2, 26; ix. 2, 56, where the same passage is quoted. Lucius Varenus, as far as can be judged from a very few fragments of this lost oration of Cicero, was accused of having killed Caius Varenus and Salarius, and of having attempted the life of Cneius Varenus. Cicero endeavours to transfer the guilt from Lucius Varenus to the slaves of Caius Ancharius Rufus, (vii. 2, 10,) but was unsuccessful, for Lucius Varenus was condemned. vii. 2, 36. *Spalding.*

‖ *Multiplex causa.*] See iii. 10, 1; iv. 2, 85.

¶ C. 42.

** C. 2.

and trying to gain applause, forsooth, for what is little more than a trick,* is frigid and puerile; though Ovid constantly indulges in it in his Metamorphoses; but, for him, necessity may be some excuse, as he had to unite things the most discordant into the semblance of a whole. 78. But what need is there for the orator to conceal his transitions, and impose upon the judges, when they require to be admonished to give their attention to the order of particulars? The commencement of the statement of facts will even be lost upon them, if they are not aware that such statement is begun. 79. Accordingly, as it is best not to rush abruptly into our statement, so it is preferable not to pass to it without notice. But if a long and perplexed exposition is to follow, the judges must be specially prepared for it; as Cicero has done in many places, and more remarkably in this :† *I shall make a rather longer introduction than ordinary to demonstrate this point, and I entreat you, judges, not to receive it unfavourably; for, when the commencement is understood, you will with far more ease comprehend the sequel.*

Such are the principal notions which I have conceived respecting the exordium.

* *Ut ipse transitus efficiat aliquam utique sententiam, et hujus velut præstigiæ plausum petat.*] "That the transition itself may form some particular thought, and may seek applause for this trick, as it were." Spalding would read *petant*, sc. *oratores*. Capperonier observes that *sententia* is here the same as *γνώμη* or *νόημα*.

† Pro Cluent. c. 4 extr.

CHAPTER II.

Of the statement of facts; some make too nice distinctions respecting it, 1—3. A formal statement not always necessary, 4—8. Those are mistaken who suppose that a statement is never necessary on the part of an accused person who denies the charge, 9—19. What the judge already knows may sometimes be stated, 20—23. The statement need not always immediately follow the exordium, 24—27. The practice of the schools injudiciously transferred to the forum, 28—30. The statements should be clear, brief, and credible, 31—35. Of clearness, 36—39. Of brevity, 40—47. Of credibility, 48—53. The statement of facts should prepare the judge for the proof of them, 54—60. Certain qualities have injudiciously been made peculiar to the statement, 61—65. A ridiculous direction that the statement should be omitted in a cause which is unfavourable to us, 66. Difficult points must be variously managed, according to the nature of the case, 67—74. In a conjectural cause we must make a statement, but with art and care, 75—81. We must sometimes divide our statement, and invert the order of occurrences, 82—87. Of fictitious statements, 88—93. Complexion of a statement, 94—100. How we must act if the facts be partly for us and partly against us, 101, 102. Apostrophe and other figures absurdly excluded from the statement, 103—115. The statement should be embellished with every grace of language, 116—124. Of authority in the pleader, 125—127. Of repetition, 128. Of the commencement and conclusion of the statement, 129—132.

1. It is most natural, and ought to be most usual, that when the judge has been prepared by the methods which have been noticed above, the matter, on which he is to give judgment, should be stated to him. 2. This is the narrative, or statement of the case; but, in touching upon it, I shall purposely pass over the too subtle distinctions of those who make several kinds of statements; for they will have an exposition, not only of the business on which the question is brought before the judges, but of the *person* whom it concerns, as, *Marcus Palicanus, a man of humble birth, a native of Picenum, loquacious rather than eloquent;** or of the *place* at which it occurred, as, *Lampsacus, judges, is a town on the Hellespont;*† or of the *time*, as,

* We learn from Aulus Gellius, i. 15, that these words are taken from the lost history of Sallust. The man characterized in them is doubtless the same that Cicero, Brut. c. 62, calls *aptiorem auribus imperitorum.* Compare Val. Max. iii. 8 Rom. 3; Ascon. Ped. p. 19, 6.; ad Cic. Div. c. 3, et Act. in Verr. pr. c. 15; Cic. ad Attic. i. 1, 18. *Spalding.*

† Cic. in Verr. i. 24.

In early spring, when from the hoary hills
The cold snow melting flows; *

or of the *causes* of the occurrence, which historians very often give, when they show whence arose a war, a sedition, or a pestilence. 3. In addition to these distinctions, they call some statements *perfect*, others *imperfect*; but who is not aware of such a difference? They add that there is a kind of statement regarding *past time*, which is the most common kind; another respecting the *present*, such as that of Cicero † about the stir of Chrysogonus's friends when his name was mentioned; and a third relating to the *future*, which can be allowed only to prophets; for *hypotyposis* ‡ is not to be regarded as a statement of facts. 4. But let us turn our attention to matters of more importance.

Some have thought that there must always be a statement of facts;§ but that this notion is unfounded, may be proved by many arguments. In the first place, there are some causes so brief, that they require only a mere proposition‖ rather than a statement. 5. This may happen at times on either side, when there is either no exposition of matters, or when the parties are agreed about the fact, and there is no dispute but concerning the law; as in such questions as these before the centumviri, *Whether a son or a brother ought to be the heir of a woman that dies intestate;* or *whether puberty is to be decided by years or by a certain habit of body.* Or when there is indeed room for a statement of facts in the cause, but every particular of it is previously known to the judge, or has been fully set forth in the preceding part. 6. At times, again, it may happen only on one side, and more frequently on that of the prosecutor, either because it is sufficient for him to make a simple proposition, or because it is more advantageous for him to do so. It may be sufficient, for instance, to say, *I claim a certain sum of money lent on certain conditions;* or, *I claim a legacy according to a*

* Virg. Georg. i. 43.

† Pro Rosc. Am. c. 23.

‡ IX. 2, 40; Cic. De Orat. iii. 53.

§ From Seneca the father, p. 149, we learn that Apollodorus always required a statement of facts, but that Theodorus did not. *Spalding.*

‖ See the fourth chapter of this book; also c. 1, sect. 35, and iii. 6, 76.

certain will: and it will be for the opposite party to show why such claims are not due. 7. It is sufficient for the prosecutor, and more advantageous, to open his cause in this way, *I say that the sister of Horatius has been killed by him,* for the judge comprehends the whole charge from this one proposition; and then the way in which the act took place, and the motive for it, are left rather to be stated by the defendant. 8. As for the accused person, he will withhold a statement of facts, when the charge against him can neither be denied nor palliated, but will rest solely on a question of law; thus, in the case of the man who, having stolen the money of a private person out of a temple, is accused of sacrilege, a confession will show more modesty than a statement. *We do not deny*, the defendant and his advocate may say, *that the money was taken from the temple; but the accuser makes the charge that we are amenable to the law against sacrilege, though the money was private, and not consecrated; and it is for you to decide the question whether sacrilege has been committed.*

9. But though I allow that there are at times such reasons for giving no statement of facts, I dissent from those who think that there is no statement when an accused person merely denies the charge which is brought against him; an opinion which is held by Cornelius Celsus, who considers that most trials for murder, and all those for bribery and extortion, are of this class; 10. for he thinks that there are no statements of facts but such as give a general exposition of the charge on which judgment is to be pronounced; yet he admits himself that Cicero gives a statement of facts in his oration for Rabirius Posthumus; though Cicero denies that any money came into the hands of Rabirius, which was the very point on which the question rested; and, in his statement of facts, he gives no exposition of the charge.

11. For my part, besides resting on the authority of eminent rhetoricians, I am myself of opinion that there are two kinds of statements in judicial causes; the one sort being an exposition of the cause itself, and the other of the circumstances connected with it. 12. *I have not killed a man;* here there is no statement of facts; it is admitted that there is none; but there will be one, and sometimes a long one, in reply to the support of the accusation, and in regard to the

past life of the accused, the causes by which an innocent man has been brought into peril, and other circumstances by which the charge is rendered incredible. 13. For the accuser does not say merely, *You have killed*, but states by what proofs he can establish his assertion; as in tragedies, when Teucer accuses Ulysses of having killed Ajax,* saying that *he was found in a solitary place, near the dead body of his enemy, and with a blood-stained sword in his hand*, Ulysses does not merely reply that the deed was not committed by him, but affirms that there was no enmity between Ajax and himself, and that they had been rivals only for glory; and then adds how he came into that lonely spot, saw the dead body lying on the ground, and drew the sword out of the wound. To this statement are subjoined various arguments.† 14. But there is a statement of fact even when the accuser says, *You were in the place in which your enemy was killed*, and the defendant says, *I was not*, for he must show where he was. For the same reason, causes of bribery and extortion may have several statements of this kind, as there may be several heads of accusation; in which statements, indeed, the charges will be denied, but resistance must at the same time be made to the accuser's arguments, sometimes singly, sometimes in a body, by an exposition of matters totally different from his. 15. Will a person accused of bribery act wrong in stating what sort of parents he had, how he himself has lived, or on what pretensions he relied when he proceeded to stand for office? Or if a man is accused of extortion, may he not advantageously give an account of his past life, and of the means by which he brought upon him the resentment of his whole province, or of his accuser, or some particular witness? 16. If such an account is not a statement of facts, neither is that first speech of Cicero in behalf of Cluentius, commencing with the words *Aulus Cluentius Habitus*;‡ for there is nothing in that speech about the poisoning, but merely about the

* We find nothing of this sort in the tragedies now extant relating to this subject. That of Sophocles represents Ulysses as friendly to Teucer. *Spalding.*

† As, *I am not to be accused of killing him because I was found near the body*; else suspicion would have fallen upon you, his brother, if you had been found near it. *Turnebus.*

‡ Cic pro Cluent. c. 5.

causes by which his mother became his enemy. 17. Statements also relate to the cause, but are not part of the cause itself, which are given for the sake of example, as that in Cicero's speech against Verres concerning Lucius Domitius,* who crucified a shepherd because he confessed that he had used a hunting-spear in killing a boar which he offered as a present to Domitius; 18. or for the purpose of exposing some charge foreign to the case, as in Cicero's oration for Rabirius Posthumus:† *For as soon as he came to Alexandria, judges, the only method of preserving his money proposed by the king to Posthumus was this, that he should take the charge, and as it were stewardship, of the palace;* or with the intention of exaggerating, as in the description of the journey of Verres.‡

19. Sometimes a fictitious statement of particulars is introduced; either to rouse the feelings of the judges, as that in the speech for Roscius respecting Chrysogonus, which I mentioned a little above;§ or to amuse them with a little pleasantry, as that in the speech for Cluentius regarding the brothers Cepasii;‖ or, occasionally, to make a digression for the purpose of embellishment, as that in the speech against Verres¶ concerning Proserpine: *It was in these parts that a mother is said formerly to have sought her daughter.* All these observations assist to show that he who denies may not only make a statement, but a statement concerning the very point which he denies.

20. Nor is the observation which I made above, that a statement is superfluous respecting a matter with which the judge is acquainted, to be taken absolutely; for I wish it to be understood in this sense, that it is superfluous if the judge not only knows the fact, but takes such a view of it as is favourable to our side. 21. For a statement of facts is not made merely that the judge may comprehend the case, but rather that he may look upon it in the same light with ourselves.

* In Verr. v. 3. Burmann thinks that *obtulerat* in the text should be *obtulerant*, as it was not the shepherd that presented the boar, but others, of whom Domitius inquired who had killed so large a beast.

† C. 10.

‡ In Verr. i. 16, 17.

§ Sect. 3.

‖ Cic. pro Cluent. c. 20, 21.

¶ IV. 48.

Though, therefore, he may not require to be informed, but only to be impressed in a certain way, we may make a statement with some preliminary remarks, as that, *we are aware that he has a general knowledge of the case, but entreat him not to be unwilling to listen to an account of particulars.* 22. Sometimes we may pretend to repeat our statement for the information of some new member taking his seat among the judges; sometimes, in order that even the by-standers may be convinced of the iniquity of what is asserted on the opposite side. In this case, the statement must be diversified with varieties of phraseology, to spare the judge the weariness of hearing what he already knows; thus, we may say, *You remember*, and, *Perhaps it may be unnecessary to dwell on this point*, or, *But why should I say more on this subject, when you are already acquainted with it?* or, *Of the nature of this affair, you are not ignorant;* or we may introduce various other phrases similar to these. 23. Besides, if a statement of facts seem always unnecessary before a judge to whom the cause is known, the pleading of the cause before him may seem also to be sometimes unnecessary.

24. There is another point about which there is still more frequently a question, *Whether the statement of facts is always to be immediately subjoined to the exordium;* and those who hold the affirmative cannot be thought destitute of arguments to support them; for as the exordium is made with the intent that the judge may be rendered more favourable by it, and more willing and attentive to understand the case, and as proof cannot be adduced unless the case be previously understood, it appears right that the judge should at once be made master of the facts. 25. But the nature of a cause sometimes justly changes this order; unless, perchance, Cicero be thought, in that excellent oration which he wrote on behalf of Milo, and which he has left to us, to have injudiciously delayed his statement of facts, by introducing three questions* before it; or unless it would have been of any profit to relate how Clodius lay in wait for Milo, if it had been supposed impossible for an accused person, who confessed that he had killed a man, to be defended,

* These three questions are to be gathered from what follows: 1. About defending a man who confessed that he had killed another. 2. About the pre-judgment of the senate. 3. About the feeling of Pompey. *Spalding.*

or if Milo had been already prejudged and condemned by the senate, or if Pompey, who, to favour some party, had surrounded the place of trial with a troop of armed men, had been dreaded by Milo as ill-disposed towards him. 26. These questions, therefore, were of the nature of an exordium, as they all served to prepare the judge. But in his speech for Varenus, also, he did not introduce his statement of facts until he had refuted certain allegations. This mode of proceeding will be of advantage, too, whenever the charge is not only to be resisted, but to be retorted on the opposite party, so that our own case being first established, our statement of facts may be the commencement as it were of a charge against our adversary; as, in a passage of arms, care to ward off a blow takes the precedence of anxiety to inflict one

27. There are some causes, and indeed not a few, which are easy to be defended so far as to refute the charge on which the trial bears, but which labour under many grievous enormities of the defendant's former life; and these must first be set aside, in order that the judge may listen favourably to the defence of the point about which the question really is. Thus, when Marcus Cœlius is to be defended, does not his advocate judiciously repel the imputations against him of *luxury*, *licentiousness*, and *immorality*, before he proceeds to consider that of *poisoning*? It is about these points that the whole of Cicero's pleading is employed. And does he not then make a statement about *the property of Palla*,* and explain the whole question respecting the *violence*,† which is defended by the pleading of Cœlius himself?‡ 28. But the custom of the schools is our guide, in which certain points are proposed for us to speak upon, which we call *themata*,§ and beyond which there is nothing to be refuted; and thus it is that our statement of facts is always subjoined to our exordium. 29. Hence, too, is the liberty which the declaimers take to make a statement of facts even when they appear to speak in the second

* Cic. pro Cæl. c. 10. We know nothing of that affair from any other quarter. *Spalding.* Palla was the name of a man whose property Cœlius had been accused of appropriating to himself.

† In killing Dion the legate of the Alexandrines; c. 10, and 21, 22.

‡ For Cœlius also defended himself in this cause: comp. xi. 1, 51; and Suet. de Clar. Rhet. c. 2. *Spalding.*

§ See c. 1, sect. 4.

place in a cause;* for when they speak for the prosecutor,† they make a statement of facts just as if they were speaking first, and a defence as if they were replying to the opposite party; and such practice is very proper; for as declamation is an exercise preparatory to pleading in the forum, why should not learners qualify themselves to take either the first or second place? But, ignorant of the proceedings in the courts, they think that when they come into the forum no departure is to be made from the manner to which they have been accustomed in the schools. 30. Yet even in scholastic declamations it occasionally happens that a mere proposition‡ is in place of a statement of the case; for what statement has he to make who accuses a jealous man of ill-treating his wife, or he who accuses a cynic§ of indecency before the censors, when the whole charge is sufficiently expressed by a single word, in whatever part of the speech it be introduced? But on this head I have said enough.

31. I shall now add some remarks on the method of stating a case. A statement of a case is an *account of a thing done, or supposed to have been done; which account is adapted to persuade;* or, as Apollodorus defines it, *a narrative to inform the auditor what the matter in question is.* Most writers, and especially those who are of the school of Isocrates, direct that it should be *lucid*, *brief*, and *probable.* It is of no consequence if, instead of *lucid*, we say *perspicuous*, or, instead of *probable*, *credible* or *apparently deserving of belief.* 32. Of this specification I approve; though Aristotle‖ differs from Isocrates in one particular, as he ridicules the direction

* *Ut etiam secundo partis suæ loco narrare videantur.*] *Dicendi locus*, which learned men have laboured to explain, is nothing else but the order in speaking which was assigned to each advocate; for it was not invariably settled in the forum that the accuser should speak first, and the defendant reply; see vii. 1, 37. He therefore spoke in the second place to whom the duty was committed of answering the statements on the opposite side, whether he was the prosecutor or the accused. In the schools, where there was no replying, there was no such order observed; v. 13, 50; vii. 1, 38. Hence we understand why Quintilian uses the expression *videantur narrare.* Comp. sect. 5. *Spalding.*

† Understand *in the second place*; i. e., after the first advocate for the prosecutor has spoken. *Capperonier.*

‡ See sect. 4.

§ See Declam. Quint. 283; *Cynicus diserti filius.*

‖ Rhet. iii. 16, 4.

about brevity, as if it were absolutely necessary that a statement should be long or short, and as if there were no possibility of fixing on a just medium. As to the followers of Theodorus, they recognize only the last quality, saying that it is not always proper to state briefly or lucidly. 33. On this account I must the more carefully distinguish the various peculiarities of statements, in order to show on what occasions each quality is most desirable.

A statement, then, is either *wholly in our own favour*, *wholly in that of our opponent*, or *a mixture of both*. If it be *wholly in our own favour*, we may be content with the three qualities of which the effect is that the judge more readily *understands*, *remembers*, and *believes*. 34. Nor let any one think me to blame for remarking that the statement which is wholly in our favour ought to be made probable, though it be *true;* for there are many narratives *true* which are not *probable*, and many *probable* which are not *true*. We must therefore take no less pains that the judge may believe what we say truly than what we invent. 35. The qualities, indeed, which I have just enumerated, are meritorious in other parts of our speech; for through our whole pleading we should avoid obscurity; a certain succinctness in what we say should be everywhere observed; and all that is advanced ought to be credible. But these qualities are most of all to be studied in that part which gives the first information to the judge; for if, in that part, he happens not to understand, not to remember, or not to believe, we shall exert ourselves to no purpose in the sequel.

36. The statement, however, will be *clear* and *perspicuous*, if it be expressed, first of all, in proper and significant words, not mean, nor far-sought, nor at variance with common use, and if it give a lucid account, also, as to circumstances, persons, occasions, places, and motives, and be delivered, at the same time, in such a way that the judge may without difficulty comprehend what is said. 37. This excellence is wholly disregarded by most speakers, who, prepared for the shouts of a multitude, whether suborned for the purpose or collected by chance, cannot endure the silence of an attentive auditory, and do not think themselves eloquent unless they shake the whole court with noise and vociferation; they consider that to state a matter calmly belongs only to every-day conversation, and is in the power of even the most illiterate

while, in truth, it is uncertain whether they will not or cannot perform that of which they express such easy contempt. 38. For if they try every department of eloquence, they will find nothing more difficult than to say what every one, when he has heard it, thinks that he himself would have said; and for this reason, that he does not contemplate it as said with ability, but with truth; but it is when an orator is thought to speak truth that he speaks best. 39. But now, as if they had found a wide field for themselves in their statement, they assume an extravagant tone of voice in this part of their speech, throw back their heads,* strike their elbow against their sides, and revel in every sort of combination of thoughts and words; while, what is monstrous, their delivery pleases, and their cause is not understood. But let me put an end to these animadversions, lest I should gain less favour by prescribing what is right than ill-will by censuring what is wrong.

40. Our statement will be sufficiently concise, if, in the first place, we commence the exposition of the case at the point where it begins to concern the judge; next, if we say nothing foreign to the cause; and, lastly, if we retrench everything of which the absence will deduct nothing from the knowledge of the judge or the advantage of our client. 41. For there is often a brevity in parts, which nevertheless leaves the whole very long; as, *I came to the harbour; I beheld a vessel; I asked for how much it would take me; I agreed about the price; I went on board; the anchor was weighed; we loosed our cable,*† *and set sail.* Here none of the phrases can be expressed with greater brevity; yet it would be sufficient to say, *I set sail from the harbour;* and whenever the event sufficiently indicates what has preceded it, we ought to be content with expressing that from which the rest is understood. 42. As I can easily say, therefore, *I have a grown-up son,* it is quite superfluous for me to indulge in circumlocution, and say, *Being desirous of having children, I married a wife, I had a son born to me, I reared him, and have brought him up to full age.* Some of the Greek writers, accordingly, have distinguished a *concise* exposition,

* *Cervicem reponunt.*] As a sign of self-satisfaction. So Cic. in Verr. iii. 19: *Tamenne putamus patronum tuum in hoc crimine cervicem jactaturum et populo se ac coronæ daturum?* Spalding.

† *Solvimus oram.*] See the Epistle to Trypho, sect. 3.

σύντομον, from a *brief* one, the first being free from everything superfluous, while the other may possibly want something that is necessary. 43. For myself, I make brevity consist, not in saying less, but in not saying more, than is necessary; for as to repetitions, and ταυτολογίαι, and περισσολογίαι, which some writers on rhetoric desire to be avoided in a statement of facts, I say nothing about them, since such faults are to be shunned for other reasons than that of observing brevity.

44. We must no less be on our guard, however, against that obscurity which attends on those who abbreviate every part too much; and it is better that there should be something superabundant in a statement than that anything should be wanting; for what is unnecessary is attended with weariness, but what is necessary is not withheld without danger. 45. We must consequently avoid the conciseness of Sallust, (though in him it is accounted a merit,) and all abruptness in our language; that which does not escape a reader who has leisure to re-examine, is perhaps lost altogether upon a mere auditor, who has no opportunity of hearing it repeated; and a reader, besides, is generally a person of learning; while a judge is often one whom the country sends to the courts* to give a decision on what he can manage to understand; so that perhaps everywhere, but especially in the statement of facts, we ought to adhere to a judicious medium in our language, and say just *what is necessary*, and *what is enough*. 46. But by *what is necessary* I would not wish to be understood what is barely necessary to state a fact; for brevity ought not to be wholly unadorned, or it becomes mere rudeness. What attracts us, beguiles our attention; the more agreeable a story is, the less long it appears; and a pleasant and easy road, though it be of greater extent, fatigues us less than a shorter one that is rugged and unattractive. 47. Nor would I ever have so much regard to brevity as not to wish that everything should be inserted that can make the statement of facts

* *In decurias.*] *Decuriæ* of the *judices*, of which Augustus constituted four, and Caligula added a fifth Each of these consisted of a thousand or more *judices*, who, as they were mostly engaged in tilling their grounds, and came into the city only when required to act as *judices*, were for the most part rude and illiterate. These *decuriæ* were for trials on public matters; for private causes there were the *consilia centumviralia*. Spalding.

credible; for one that is every way plain and curtailed may be called not so much a *statement* as a *confession*. There are also many statements that are necessarily long from the nature of the case, and for attending to them, as I recommended above,* the judge must be prepared by the conclusion of the exordium; and we must then study, by every art in our power, to take something from the length and something from the tediousness of our narrative. 48. We shall make it somewhat less long, if we defer such particulars as we can to another part of our speech, not without specifying, however, what we defer: *What motives he had for killing him, whom he took as accomplices, how he disposed his ambush, I shall relate when I offer my proofs.* 49. Some particulars, too, may be set aside, as it were, out of the course of the narrative; an expedient of which we have an example in Cicero: *Fulcinius died; for many circumstances that attended the event, I shall omit, as being unconnected with the cause.* Division also lessens the tediousness of a statement: *I shall relate what took place before the commencement of the affair;*† *I shall relate what occurred during the course of it; I shall relate what happened afterwards.* 50. Thus there will appear rather to be three short narratives than a single long one. Sometimes it will be proper to break our statements by a short interlocution: *You have heard what occurred before; hear now what followed.* Thus the judge will be relieved at the conclusion of the first part, and will prepare himself for entering as it were upon a new subject. 51. But if, when all these artifices have been tried, the detail of particulars will still extend to a great length, a kind of recapitulation at the end of each part will not be without its advantage, such as Cicero‡ gives even in a short statement: *Hitherto, Cæsar, Quintus Ligarius is free from all blame; he left his home not only for no war, but without there being even the least suspicion of war*, etc.

52. As to *credibility* in our statement, it will not be wanting, if we first consult our own judgment, so as to advance nothing contrary to nature; and if, in addition, we assign causes and motives for the facts which we detail; (I do not mean for all,

* C. 1. sect. 79.

† *Ante ipsum rei contractum.*] Every affair is said *contrahi*, when it is entered upon, and hence *contractus* is used for *initium*. Spalding.

‡ Pro Ligar. c. 2.

but for those about which there is any question;) and if we represent our persons, at the same time, as of a character in accordance with the facts which we wish to be believed of them; a person *accused of theft*, for instance, as *covetous;* of *adultery*, as *libidinous;* of *homicide*, as *rash;* or the contrary, if we are on the defence; and we must do the same with regard to places, occasions, and similar particulars. 53. There is also a certain management of the narrative which gives it credibility, as in plays and pantomimes; for some things naturally follow and attach themselves to others, so that, if you make the first part of your statement judiciously, the judge himself will understand what you are going to say afterwards. 54. Nor will it be without advantage if we scatter here and there some seeds of proof, but so as not to forget that we are stating a series of facts and not of arguments. Occasionally, however, we may even confirm what we advance with some degree of proof, but simple and short; for example, in a case of poisoning, we may say, *He was well when he drank, he fell down suddenly, and a blackness and swelling of the body immediately followed.* 55. Preparatory remarks produce the same effect, as when it is said that the accused was *strong, armed, and on his guard, in opposition to those who were weak, unarmed, and unsuspecting.* On everything, indeed, of which we have to treat under the head of proof, as *character, cause, place, time, instrument, occasion*, we may touch in our statement of facts. 56. Sometimes, if these considerations fail us, we may even confess that *the charge, though true, is scarcely credible*, but observe that *it must be regarded on this account as a greater atrocity;* that *we know not how it was committed, or why;* that *we wonder at the occurrence, but will nevertheless prove the truth of it.* 57. But the best of all preparations of this kind are those of which the intention is not apparent; as in Cicero every circumstance is most happily premised by which *Clodius may be proved to have lain in wait for Milo, and not Milo for Clodius;* but what has the greatest effect is that most artful assumption of an air of simplicity: *Milo having been in the senate-house that day, returned home as soon as the senate broke up, changed his shoes and his dress, and waited a short time, while his wife, as is usual, was getting ready.* 58. How well is Milo represented as having done nothing with premeditation, nothing with haste! This effect that

master of eloquence produces not only by the circumstances which he narrates, and by which he signifies Milo's delay and composed manner of departure, but by the familiar and ordinary words which he uses, and his well concealed art in adopting them; for if the particulars had been stated in other terms, they would have warned the judge, by their very sound,* to be on his guard against the pleader. 59. To most people this passage appears lifeless, but it is hence manifest how wholly the art escaped the judge, when it is hardly observed even by a reader.

Such are the qualities that render a statement of facts credible. 60. As to directions that we should avoid contradictions or inconsistencies, if any one needs them, he will receive further instruction in vain, though some writers on rhetoric introduce such matters into their works, imagining that they were hidden from the world till they were sagaciously discovered by themselves

61. To these three properties of a statement of facts some add *magnificence*, which they call μεγαλοπρεπεία, but which is neither appropriate to all pleadings, (for what place can language, raised above the ordinary level, have in most causes about private property, about loans of money, letting and hiring, and interdicts?) nor is always beneficial, as is evident from the last example from the speech for Milo.

62. Let us bear in mind, too, that there are many causes in which we have to confess, to excuse, to extenuate what we state, in all which cases magnificence of language is utterly inadmissible. It is therefore no more our business, in making a statement, *to speak magnificently*, than to speak *dolefully*, or *invidiously*, or *gravely*, or *agreeably*, or *politely*; qualities which, though each is commendable in its proper place, are not to be assigned, and as it were devoted, to this part peculiarly.

63. That quality, also, which Theodectes assigns peculiarly to the narrative of facts, desiring that it should be not only magnificent but *pleasing*, is, though very suitable to that part of a speech, merely common to it with other parts There are some, too, who add *clearness*, or what the Greeks call ἐνάργεια,

* I read *strepitu ipso* (not *ipsum*) *judicem*, a conjecture of Rollin approved by Spalding.

64. Nor will I deceive my reader so far as to conceal from him that Cicero * desires several qualities in a statement of facts; for besides requiring it to be plain, and *concise*, and *credible*, he would have it *self-evident*, *characteristic*, and *suitable to the occasion*. But everything in a speech ought to be in some degree *characteristic* and *suitable to the occasion*, as far as is possible. *Self-evidence* in a narrative, as far as I understand the meaning of the term, is doubtless a great merit, (as what is true is not only to be told, but ought to a certain extent to make itself seen,) but it may surely be included under perspicuity, which some, however, have even thought hurtful at times, because in some cases, they say, truth must be disguised. 65. But this is an absurd observation; for he who wishes to disguise truth, wishes to relate what is false as if it were true: and, in what he relates, he must still study that his statement may seem self-evident.

66. But since we have come, by some chance as it were, to a more difficult kind of statements, let me say something on those causes in which the truth is against us; in which case some have thought that the statement of facts should be wholly omitted †. Nothing, certainly, is easier than such omission, except it be to forbear from pleading the cause altogether. But if, for some good reason, you undertake a cause of this sort, what art will there be in confessing by your silence that your cause is bad? unless you think that the judge will be so senseless as to decide in favour of that which he knows that you are unwilling to tell him. 67. I do not dispute that as some things in a statement may be denied, others added, and others altered, so likewise some may be suppressed; but such only are to be suppressed as we ought or are at liberty to suppress. This is done sometimes for the sake of brevity, as when we say, for example, *He answered what he thought proper.*

68. Let us distinguish, therefore, the different kinds of causes; for in causes in which there is no question about the charge, but only about a legal point, we may, though the matter be against us, admit the truth: *He took money from a temple, but it was that of a private individual; and he has therefore not committed sacrilege. He carried off a maiden;*

* De Orat. ii. 80; Topic. c. 26; Part. Orat. c. 9.
† See v. 13, 16.

yet option * *is not to be granted to her father.* 69. *He dishonoured a well-born youth; and the youth, on being dishonoured, hung himself, yet the author of his dishonour is not to be capitally punished as being the cause of his death, but is to pay ten thousand sesterces,† the fine imposed on him who is guilty of such a crime.* But in such confessions something of the bad impression may be removed which the statement of our opponent may have produced; since even our slaves speak apologetically concerning their own faults. 70. Some things, also, we may palliate without assuming the tone of narrative: *He did not, as our opponent alleges, enter the temple for the purpose of stealing, or watch for a favourable moment for accomplishing such object; but, tempted by the opportunity, the absence of the guards, and the sight of money, which has too strong‡ an influence over human resolution, he yielded. But what has this to do with the question? He transgressed, and became a thief? It is of no use to palliate an act of which we do not shrink from the penalty.* 71. Sometimes, too, we may seem even to condemn our own client; addressing him, for example, thus: *Would you have me say that you were excited with wine? That you fell into an error? That you were led astray in the darkness? All this may perhaps be true; but you have nevertheless dishonoured a free-born person; you must pay ten thousand sesterces.* Sometimes, again, our cause may be guarded by a careful opening, and then fully stated. 72. Every thing was adverse to the three sons who conspired to kill their father; they had drawn lots, and had entered their father's chamber, at night, one after another, while he was sleeping; but, as none of them had the heart to kill him, they confessed the whole matter to him when he awoke.

* The woman on whom a rape was committed had the privilege of choosing whether the ravisher should be put to death or marry her; but the father had, by law, no choice in the case. *Gesner.* To the *vitiatarum electiones* there is an allusion in the Dialogue de Orat. c. 35; comp. vii. 8, 4. *Spalding.*

† By the Scatinian or Scantinian law. Some other passages in ancient writers are at variance with what Quintilian says about the amount of the fine, as is shown by Bach, Hist. Jurispr. Rom. ii. 2, 29. But the same amount is specified in the Declamations attributed to Quintilian, 252 and 370. *Spalding.*

‡ *Nimium quàm.*] Spalding observes that he has been unable to find this expression in any other author, and proposes to read *nimium quantum*, which is a common phrase.

73. Yet if the father (who indeed divided his estate among them,* and defended them when accused of parricide) should plead thus, *As to defence against the law, a charge of parricide is brought against young men whose father is still alive, and appears on their behalf; and to give a regular statement of the case, therefore, would be superfluous, since the law has no bearing on it; but if you require a confession of my own misconduct, I was an austere father, and a tenacious guardian of that property which would have been better managed by them;* 74. and should then observe that *they were prompted to the act by youths whose fathers were more indulgent, but had nevertheless such feelings as was proved by the fact that they could not kill their father; for that it would have been needless for them to take an oath to kill him, if they had had the resolution to do so without it, nor would there have been any need of a lot, had not each of them been desirous to be exempted from the act;* all arguments of this nature, such as they are, would find the minds of the audience more favourably disposed to receive them, when softened by the brief defence offered in the first proposition. 75. But when it is inquired *whether a thing occurred*, or *what sort of thing occurred*, how, though everything be against us, can we avoid making a statement, if we adhere to what is due to our cause? The accuser has made his statement, and, not confining himself to intimate how matters took place, has added much to our prejudice, and exaggerated it by his language; his proofs have been brought; his peroration has excited the judges, and left them full of indignation; they naturally wait to hear what will be advanced on our side. 76. If we advance nothing, the judges must necessarily believe that what our opponent has said really happened, and that it happened just as he represented it. What then, it may be asked, shall we tell the same story as our opponent? If the question is about *quality*, (which is the next consideration after that of *fact* is settled,) we must tell the same story certainly, but not in the same

* This father had previously divided his estate among his sons who plotted against his life, and when they were accused of intended parricide by the father's relations, (as is ingeniously conjectured by the interpreter calling himself Turnebus,) who would succeed to the estate if the sons were proved guilty, the father himself appeared as advocate for his children on their trial. *Spalding.* The structure of the passage, as he adds, is by no means clear; the word *subjicitur* is probably corrupt.

way; we must assign other causes for actions, and give another view of them. 77. We may extenuate some things by the terms in which we speak of them; *luxury* may be mentioned under the softer term of *gaiety*, *avarice* under that of *frugality*, and *carelessness* under that of *good nature*. A certain degree of favour, or at least of commiseration, we may gain by our look, tone, or attitude. A confession of itself will sometimes draw tears.

As to those who are of a contrary opinion about a statement, I would willingly ask them whether they mean to justify, or not to justify, that which they do not mean to narrate? 78. For if they neither justify facts, nor make a statement of them, their whole cause will be betrayed; but if they mean to offer a justification, it is surely necessary for them, for the most part, to state what they intend to justify. Why, then, should we not make a statement of that which may be refuted, and make it, indeed, with that very object? 79. Or what difference is there between *proof* and a *statement of facts*, except that a statement is a connected exposition of that which is to be proved, and proof is a verification of that which has been stated? Let us consider, then, whether such a statement, in opposition to that of our opponent, ought not to be somewhat longer and more verbose than ordinary, by reason that we have to prepare the mind of the judge, and by reason of particular arguments that we may introduce; (I say particular *arguments*, and not a continued course of *argumentation*;) and it will give great effect to our statement if we affirm, from time to time, that *we shall establish what we say;* that *the strength of our cause could not be shown in the first exposition of it;* that *we intreat the judges to wait, suspend their opinions, and trust that we shall make good our point.* 80. Finally, we must relate whatever can be related otherwise than our adversary has related it; or, for the same reason,* exordia in such causes may be thought superfluous, since what further purpose have they, than to render the judge more disposed to understand the cause? But it is admitted that there is nowhere greater use for them, than where the mind of the judge is to be freed from some prepossession conceived against us.

81. As to *conjectural* causes,† in which the question is

* *Eo etiam.*] *Eandem ob causam.* Spalding. That is, on the supposition that we were to make no statement.

† When the accused denies that he is guilty of the fact charged

about fact, they do not so often require an explanation of the point on which a decision is to be given, as of the circumstances from which a knowledge of it is to be collected. As the prosecutor will represent those circumstances in an unfavourable light, the defendant must try to remove the unfavourable impression produced by him; the circumstances must be laid before the judge by the one in a different way from that in which they are presented to him by the other. 82. But, it may be said, some arguments are strong when advanced in a body, but of less force when separated. This remark, I answer, does not apply to the question *Whether we ought to make a statement*, but *how we ought to make one.* For what hinders us from accumulating a variety of evidence in our statement, and to promise to produce more? Or to divide our statement into portions, to give proofs under each portion as it is brought forward, and so proceed to what follows? 83. For I do not agree with those who think that we must always relate matters in the order in which they occurred: I consider rather that we should relate them in the order which is best for our cause. This may be effected by various artifices; for sometimes we may pretend that something has escaped our memory, with a view to introduce it into a place better suited to our purpose; sometimes we may quit the proper order, and assure the judge that we shall afterwards return to it, as the case will thus be rendered clearer; sometimes, after relating a fact, we may subjoin the motives that preceded it; 84. for there is no fixed law for a defence, or any invariable rule; we must consider what is best adapted to the nature of the case, and to the occasion; and must act as in regard to a wound, which, according to its state, must either be dressed at once, or, if the dressing can be delayed, must be bound up in the meanwhile. 85. Nor would I consider it unlawful to repeat a thing *several times*, as Cicero has done in his speech for Cluentius; a liberty which is not only allowed to be taken, but is sometimes even necessary, as in cases of extortion, and all such as are not at all complicated.* It is the part of a fool, indeed, to be led by a superstitious regard for rules to

against him, he will hardly make a statement of it, unless he throws the guilt upon some other party *Turnebus.*

* Comp. c. 1, sect. 74; c. 4, sect. 4.

act against the interest of his cause.* 86. It is the practice to put the statement of facts before the proofs, that the judge may not be ignorant of the point about which the question is; and why, then, if every circumstance is to be established or refuted, is not every circumstance to be stated in our narrative? For myself, as far as any account is to be made of my practice, I know that I used to adopt that method whenever the interest of any cause required it, and with the approbation, too, of men of experience, and of those who sat in judgment; and in general, (a remark which I do not make from vanity, for there are many, with whom I was associated in pleading, who can contradict me if I speak falsely,) the duty of stating the case was assigned to me. 87. Yet I would not on that account say that we should not more frequently follow the order of facts. In some facts the order cannot be changed without impropriety; as if we should say, for example, that a woman *had a child*, and should afterwards say that *she conceived;* that a will was *opened*, and then that it was *sealed;* and if, in speaking of such matters, you chance to mention first that which happened last, it is best to make no allusion to that which happened first.

88. There are also at times *false* statements;† of which two kinds are introduced in the forum; one, which depends on extrinsic support; as Publius Clodius rested his cause on the testimony of witnesses, when he affirmed that he was at Interamna the night on which he committed a heinous crime at Rome; the other, which must be supported by the ability of the pleader; and this relies sometimes on a mere assumption of modesty in him, whence it appears to me to be called *complexion;* sometimes on a peculiar representation of the case. 89. But, whichsoever of the two modes we adopt, our first care must be that what we invent, be possible; next that it be in accordance with person, place, and time, and have a character and order that are probable; and, if it be practicable, our representation should be connected with something that is acknowledged to be true; or be supported by some argument relative to the question; for what is altogether sought from without the cause, is apt to betray the licence which we take in inventing. 90. We must be extremely watchful, too, that no two particulars (as often happens with tellers of fiction)

* Comp. c. 1, sect. 64, 65; and c. 5, sect. 7.
† Comp. sect. 19

contradict one another; (for some things may suit very well with certain parts* of our case, and yet not agree with each other on the whole;) and also that they be not at variance with what is acknowledged to be true; it being a maxim even in the schools, that the complexion is not to be sought from without the argument. 91. But both in the schools and in the forum, the speaker ought to keep in mind, throughout the whole case, what he has invented, since what is not true is apt to be forgotten, and the common saying is just, that a liar ought to have a good memory. 92. Let us consider, also, that if the question be concerning an act of our own, we must adhere to one particular statement; but if concerning the act of another, we may bring it under a variety of suspicious aspects. In some scholastic causes, however, in which it is supposed that a person under accusation does not answer to the questions put to him,† liberty is granted to enumerate all the answers that might have been given. 93. But let us remember that we are to feign only such things as are not liable to be disproved by evidence; and these are such as proceed only from our own thoughts, of which we alone are conscious; such as are supposed to have been said by the dead, of whom none will appear to refute them; or by one who has the same interest with ourselves, for he will not contradict us; or even by our adversary, as in denying them he will gain no credit. 94. As to imputed motives from dreams and superstitious feelings, they have lost all credibility from the ease with which they are invented.

Nor is it sufficient to adopt a certain *colour* in our statement of facts, unless it preserve a consistency through the whole case; especially as the only mode of establishing certain points lies in *asseveration* and *persistence;* 95. as the parasite (who claims as his son a youth that had been three times disinherited ‡ by a rich man, and allowed to return to him,) will

* *Partibus blandiuntur.*] *Partibus* is in the ablative case; *quibusdam in partibus; secundum quasdam partes.* Capperonier. "Il est des choses qui se concilient avec certaines parties." *Gedoyn.*

† When the subject is such that the accused opposes an obstinate silence to every interrogatory, or is, for some reason, not allowed to reply; for though no reply was introduced in scholastic declamations in general, (see sect. 28,) yet I do not suppose that Quintilian intends here to say this of all declamations whatever. *Spalding.*

‡ It is to be understood that the rich man had thrice signified an in-

have some *colour* for asserting that poverty was his reason for exposing the boy; that the character of parasite was assumed by him merely because he had a son in that house, and that the innocent youth was disinherited three times only because he was not the son of the person who disinherited him. 96. But unless he exhibit, throughout all his speech, the affection of a father, and that in the most ardent manner, together with the hatred of the rich man towards the youth, and his own fear for him, as knowing that he will stay with the greatest danger in a house in which he is so detested, he will not escape the suspicion of being a suborned claimant.

97. It happens at times in the declamations of the schools, (I know not whether it can possibly happen in the forum,) that both parties make the same allegations, and each supports them on its own behalf; as in this cause: 98. *A wife informed her husband that her step-son had endeavoured to seduce her, and had appointed a time and place for their meeting; the son, on his part, brought a similar charge against his step-mother, only naming a different time and place; the father finds his son in the place which the wife had named, and his wife in that which the son had named; he divorced his wife, and, as she said nothing, disinherited his son.* Nothing can be said on behalf of the young man, which may not also be said on behalf of his step-mother. 99. What is common, however, to both parties, will be stated; and then, from the comparison of persons, from the order in which the informations were given, and from the silence of the wife, when divorced, arguments will be drawn. 100. Nor ought we to be ignorant that there are some cases which do not admit of any *colouring*, but are simply to be defended;† as was that of the rich man, who lashed with a scourge the statue* of a poorer

tention to disinherit his son, which the laws did not allow him to carry into execution. Hence the son is said in the text to be *absolutus*. or sent back to his father's house. The rich man, thus repeatedly disappointed, suborns a parasite whom he had in his house to claim the young man as his own son, hoping to get rid of him by that means. There were, in reality, no laws with regard to disinheriting; they were merely fictions of the schools. *Spalding.*

* As when a person rests his defence solely on the law. *Spalding.*

† Badius Ascensius aptly illustrates this passage by citing a passage from Paulus, Digest. xlv. 10, 27: "If the statue of your father, erected on his monument, has been injured by stones thrown at it

man, that was his enemy, and was in consequence accused of committing an insult. A pleader cannot say in palliation of such an act that it was that of a sensible man; but he may perhaps succeed in defending it from penalty.

101. But if part of a statement be in our favour, and part against us, we must deliberate, according to the nature of the case, whether we ought to blend those parts together, or keep them distinct. If the facts which make against us be the more numerous, those which are in our favour will be overwhelmed by them. In such a case, then, it will be best to divide them, and, after stating and confirming the circumstances that are favourable to us, to adopt against the rest such remedies as we have already * specified. 102. If the facts in our favour be the more numerous, we may very well unite them, that those which are adverse to us, being placed as it were in the midst of our auxiliaries, may have less force. Neither the one nor the other, however, are to be exposed undefended; but we must take care to support such as favour us with proof, and add reasons why such as are against us are not to be credited; because, unless we make a distinction, it is to be feared that the good may be polluted by the contamination of the evil.

103. The following directions, too, are commonly given respecting the statement of facts; that no *digression* is to be made from it; that we are *to address ourselves constantly to the judge*;† that we are *to speak in no character but our own;* and that we are to *introduce no argumentation;* and some even add that we are *not to attempt to excite the feelings.* These precepts, doubtless, are to be in general observed; or, I may say, never to be departed from, unless the nature of our cause obliges us to disregard them. 104. In order that our statement may be clear and concise, nothing can be so seldom justifiable in it as *digression;* nor ought there ever to be any except such as is short, and of such a nature that we may seem to be hurried into it, out of our right course, by the strength of

you cannot bring an action against the thrower of the stones for violation of a sepulchre, but you may for the injury done to the statue; as Labeo writes." Something similar is mentioned by Pausanias, vi. 11, in regard to the statue of Theagenes an athlete. *Spalding.*

* Sect. 65, *seqq.*

† C. 1, sect. 63.

our feelings. 105. Such is that of Cicero* respecting the marriage of Sassia: *Oh, incredible wickedness in a woman! such as has not been heard of, in the whole course of human life, except in this one female! Oh, unbridled and immoderate lasciviousness! Oh, unparalleled audacity! Not to have feared, if not the power of the gods, or the opinion of men, at least that very night, and those nuptial torches! Not to have respected the threshold of the chamber, or the couch of her daughter, or the very walls themselves, the witnesses of her former marriage!* 106. As to constantly addressing the judge, a *brief diversion of our speech from him* sometimes intimates a thing more concisely, and gives it more effect. On this point, accordingly, I hold the same opinion as I expressed respecting the exordium; and I think the same with regard to the *prosopopeia;* which, however, not only Servius Sulpicius† has used in his defence of Aufidia, "*That you were languid with sleep, should I suppose, or oppressed with a heavy lethargy?*" etc., but Cicero himself, in speaking of the ship-masters,‡ (for that passage is a statement of facts,) exclaims, "*For liberty to enter, you will give so much,*" etc. 107. In his pleading for Cluentius,§ too, does not the conversation between Stalenus and Bulbus contribute greatly to the rapidity of the narrative, and to its credibility? And that he may not be supposed to have fallen into this manner undesignedly, (a supposition which is indeed wholly incredible with regard to such an orator,) he recommends, in his Oratorical Partitions,‖ that the statement of facts should display *agreeableness, something to excite surprise and expectation, unexpected results, conversations between different people, and all the feelings of the mind.* 108. Continued *argumentation*, as I observed,¶ we must never use in our statement of facts; though we may

* Pro Cluent. c. 5.

† Servius Sulpicius, the friend of Cicero, a very celebrated lawyer, is said to have spoken in defence of Aufidia, not only here, but in x. 1, 22; and this makes it the more difficult to explain vi. 1, 20, where a speech of his *against* Aufidia is mentioned; for we learn from x. 1, 116, and 7, 30, that there were only three of his speeches extant, and it is hardly credible that two of them were on opposite sides in the same cause. Of Aufidia's case we find no mention in any other writer. *Spalding.*

‡ In Verr. v. 45.

§ C. 26.

‖ C. 9.

¶ Sect. 79, 103.

introduce a *single argument* occasionally, as Cicero does in his speech for Ligarius,* when he says that he had governed his province in such a way as made it expedient for him that there should be peace. We may also introduce in our statement, if the subject requires, a short defence of our client's conduct, or a reason for it: for we are not to state things as a witness, but as an advocate. 109. The simple account of a fact may be such as this: *Quintus Ligarius went into Africa as lieutenant-general with Caius Considius.* But how does Cicero give it? *Quintus Ligarius, when there was not even a suspicion of war, went into Africa as lieutenant-general with Caius Considius.* 110. In another place, again, *He set out, not only to no war, but not even upon the least suspicion of war.*† When it was sufficient for him, too, in proceeding to state a fact, to say, *Quintus Ligarius allowed himself to be involved in no transaction,* he adds, *looking back to his home, and being desirous to return to his friends.* Thus what he stated he made credible by giving a reason for it, and made a strong impression, at the same time, on the feelings of his audience.‡ 111. I am the more surprised at those, therefore, who think that we are not to touch the feelings in a statement of facts. If they mean, indeed, that we are not to work on them long, or as in the peroration, they are of the same opinion with myself; for tediousness is to be avoided; otherwise, why should I not move the judge while I am instructing him? 112. Why should I not secure, if possible, at the very opening of my case, the object which I am desirous to attain at the conclusion of it, especially as I shall find his mind more manageable, when I come to proofs, if it has previously been swayed by indignation or pity? 113. Does not Cicero,§ in a very few words, touch all the feelings by describing the scourging of a Roman citizen, not only showing the condition of the sufferer, the place of the outrage, the nature of the infliction, but extolling the spirit with which he bore it? For he exhibits him as a man of great magnanimity, who, *when he was lashed with rods, uttered no*

* C. 2.

† Pro Lig. c. 1, 2.

‡ *Affectûs quoque implevit.*] *Affectus,* as Spalding observes, is in the genitive case, but he would rather read *affectu,* as the ablative is more usual with Quintilian. Cicero, says Gesner, excited the pity of the judges for Ligarius.

§ In Verr. v. 62.

groan, and made no supplication, but only exclaimed that he was a Roman citizen, to the disgrace of his oppressor, and with confidence in the laws. 114. Has he not also, through the whole of his statement, excited the greatest detestation of the treatment of Philodamus,* and caused the tears of his audience to overflow at his punishment, not so much relating that they wept, as exhibiting them weeping, *the father, that his son was to die, and the son that his father was to die?* What more touching could any peroration present? 115. It is late, too, to bring the feelings, at the end of a speech, to bear on particulars which we have previously narrated with coolness; the judge has become familiarized to them, and hears, without any excitement, that with which he was not moved when it was new to him; and it is difficult for us to change the temper of his mind when once it is settled. 116. For my own part, (for I will not conceal my opinion, though that which I am going to say rests rather upon experience than upon precepts,) I think that the statement of facts requires, as much as any part of a speech, to be adorned with all the attractions and grace of which it is susceptible. But it makes a great difference what the nature of the case which we state is. 117. In the smaller sort of cases, therefore, such as private ones in general are, the garb of the statement ought to be neat, and, as it were close-fitting; there should be the greatest care with regard to words, which, when we enlarge upon the common topics of morality,† are poured forth with rapidity, and particular expressions are often lost in the profusion of language in which they are enveloped; but here every word ought to be expressive, and, as Zeno‡ says, *tinctured with peculiar signification;* the style should be apparently artless, but as agreeable as possible; 118. there should be no figures borrowed from poetry, and received on the authority of the ancients contrary to the simplicity of language, (for the diction should be as pure as possible,) but such only as lessen tedium by variety, and relieve attention by change, so that we may not fall into similar terminations, similar phrases, and similar constructions; for a statement has no other attractions,

* In Verr. i. 30.

† C. 1, sect. 59.

‡ Zeno of Citium is doubtless meant. That he wrote on language and composition appears from Diog. Laert. vii. 4, 39, 40. *Spalding.*

and, if it be not recommended by such graces, must fail to please. 119. Nor is the judge in any part more attentive; and consequently nothing that is expressed with effect is lost upon him. Besides he is more inclined, I know not how, to believe what gratifies his ear, and is led by being pleased to being persuaded.

120. But when the cause is of greater moment, it will be proper to speak of heinous crimes in a tone of invective, and of mournful occurrences in one of pity; not that the topics for exciting the feelings may be exhausted, but that an outline of them, as it were, may be presented; and that it may at once appear what the full picture of the case will be. 121. Nor would I dissuade a speaker from reviving the strong feeling of the judge, when exhausted with attention, by some remark, especially if thrown in with brevity; such, for instance, as this: *The servants of Milo did what every one would have wished his servants to do in such circumstances;* or occasionally, perhaps, a little more boldly, as this:* *The mother-in-law marries her son-in-law, without auspices, without any to sanction the union, and with the most fatal omens.* 122 As this practice was adopted even in days when every speech was composed rather for use than for show, and the judges were still more austere, how much more aptly may it be done now, when pleasure has made its way even into trials for life and fortune? How far we ought to conform to this taste of our age, I will give my opinion in another place.§ Meantime I allow that some concession is to be made to it.

123. A probable representation of circumstances which appears to conduct the audience, as it were, to a view of the case, has, when subjoined to what is really true, a powerful effect; such, for example, as the description given by Marcus Cælius‡ of Antonius.§ They|| find him sunk in the sleep of drunkenness,

* Cic. pro Cluent. c. 5.

† Rollin and Gesner think that the preface to book viii. is meant; also viii. 3, 6, *seqq.* Perhaps we may suppose an allusion to xii. 9, 5. *Spalding.*

‡ See i. 6, 29, and Val. Max. iv. 2 Rom. 7.

§ I have no doubt that this was the Caius Antonius who was the colleague of Cicero in the consulship, the uncle of Mark Antony the triumvir. That he was accused by Cælius, when a young man, we know from many writers; see Cic. pro Cæl. c. 7 and 31. *Spalding.*

|| Namely the centurions, who brought him news of the approach of the enemy.

snoring with the whole force of his lungs, and repeating eructation on eructation, while the most distinguished of his female companions were stretched across towards him from their several couches, and the rest lying round in every direction; 124. *who, however, becoming aware of the approach of the enemy, attempted, half dead with terror, to awaken Antonius; they called him aloud by name to no purpose; they raised his head; one whispered gentle sounds into his ear; another struck him forcibly with her hand; but when at length he became conscious of the voice and touch of each, he only threw his arms round the neck of her that was next to him; he could neither sleep after being roused, nor keep awake from the effects of drunkenness; but was tossed about, half asleep and half awake, in the hands of centurions and harlots.* Than this description nothing could be imagined more probable; nothing offered as a greater subject of reproach; nothing exhibited more vividly

125. Nor can I omit to remark how much credit *the authority of the speaker* gives to his statement; an authority which we ought to secure chiefly by our general conduct, but also by our style of oratory; since the more grave and serious it is, the more weight it must give to our assertions. 126. We must especially avoid, therefore, in this part of our speech, all suspicion of artifice, (for nowhere is the judge more on his guard,) so that nothing may appear fictitious or studied, but that all may be thought to emanate rather from the cause than from the advocate. 127. But this manner our modern pleaders cannot tolerate; we think that our art is lost if it is not seen, whereas art, if it is seen, ceases to be art. We doat upon praise, and think it the great object of our labour; and thus betray to the judges what we wish to display to the bystanders.

128. There is also a sort of *repetition* of the statement, which is called by the Greeks ἐπιδιήγησις: a thing more common in school declamations than in the forum. It was introduced with this object, that, as the statement of facts ought to be brief, the case might afterwards be set forth more fully and with more embellishment, in order to move indignation or pity. To this practice I think that we should have recourse but seldom, and never so as to repeat the whole order of circumstances; for we may effect the same object by recurring to particulars here and there. Let him, however, that shall

determine on such repetition, touch but lightly on facts in his statement, and, contenting himself with relating *what has been done*, promise to explain more fully *how it was done* in the the proper place.

129. As to the *commencement* of a statement of facts, some think that it ought to be made with reference to some character, whom, if he is on our side, we are to extol, and, if adverse to us, to attack. This certainly is a very common mode of proceeding, because on each side there are persons between whom the dispute lies. 130. But they may sometimes be introduced with descriptive circumstances, when such a course is likely to be advantageous; as,* *Aulus Cluentius Habitus, judges, was the father of my client, a man who held the highest position, not only in the municipal town of Larinum, in which he was born, but in all that country and neighbourhood, for his merit, reputation, and respectability of birth;* sometimes without them: as, *when Quintus Ligarius had set out,*† etc. 131. Sometimes, however, we may commence with a fact, as Cicero in his speech for Tullius:‡ *Marcus Tullius possesses an estate inherited from his father in the territory of Thurium;* or as Demosthenes § in behalf of Ctesiphon: *For the Phocian war having broken out*, etc 132. As to the *end* of the statement, it is a matter of dispute with those who think that the statement itself should be brought down to the point where the question arises:‖ as,¶ *These things having thus happened, Publius Dollabella the prætor published an edict, as is customary with regard to violence and men appearing in arms, without any exception, only that Æbutius should reinstate Cæcina in the place from which he had expelled him. He said that he had reinstated him. A sum of money was deposited; and it is concerning this deposit that you must decide.* This can always be done on the side of the prosecutor, but not always on that of the defendant.

* Cic. Pro Cluent. c. 5.

† Cic. pro Ligar. c. 1.

‡ A fragment of a lost speech. Another fragment of it is given, v 13, 21. What Tullius it was is uncertain.

§ Pro Coron. p. 230, ed Reisk

‖ Comp. c 4, sect. 2.

¶ Cic. pro Cæcin. c. 8.

CHAPTER III.

Of digressions or excursions immediately after the statement, § 1—3. Not always unreasonable, 4—8. Some preparation often necessary before proceeding to proof, 9—11. Digressions may be made in any part of a speech, but those in the middle should be short, 12—17.

1. In the order of things the *confirmation* follows the statement; for we must prove what we stated only *that it might be proved*. But before I proceed to treat of this part, I must make a few observations on the opinions of certain rhetoricians.

It is the custom of most speakers, when the order of facts is set forth, to make a digression to some pleasing and attractive moral topic, so as to secure as much favourable attention as possible from the audience. 2. This practice had its rise in the declamatory ostentation of the schools, and passed from thence into the forum, after causes began to be pleaded not to benefit the parties going to law, but to enable the advocates to make a display; from apprehension, I suppose, that if the stubbornness of argument should immediately follow the dry conciseness of narrative, (such as is often necessary,) and the gratification of eloquent diction should be too long withheld, their whole oration would appear cold and repulsive. 3. To this custom there is this objection, that the speakers indulge in it without making due distinction of causes, and what particular causes require, but as if such displays of eloquence were always expedient or even necessary; and in consequence they force into their digression matters taken from other parts to which they properly belong; so that many things must either be said over again, or, as they have been said in a place to which they had no right, cannot be said in their own. 4. I admit, however, that this sort of excursion may be advantageously introduced, not only after the statement of the case, but after the different questions in it, altogether or sometimes severally, when the subject requires or at least permits it; and I think that a speech is by such means greatly set off and embellished; provided that the dissertation aptly follows and adheres to what precedes, and is not forced in like a wedge, separating what was naturally united. 5. For no part of a speech ought to be more closely attached to any other part,

than the proof is to the statement; unless indeed the digression be intended either as the end of the statement or as the beginning of the proof. There will therefore sometimes be room for it; for instance, if our statement, towards the conclusion, contains something very heinous, we may enlarge upon it, as if our indignation, like our breath, must necessarily have vent. 6. This however ought to be done only when the matter does not admit of doubt; else it is of more importance to make your charge true than atrocious; because the enormity of an accusation is in favour of the accused as long as it remains unproved, for belief in the commission of a heinous crime is extremely difficult. 7. A digression may also be made with advantage, if, for example, when you have spoken of services rendered to the opposite party, you proceed to inveigh against ingratitude; or if, when you have set forth a variety of charges in your statement, you show how much danger in consequence threatens yourself. 8. But all these must be signified briefly; for the judge, when he has learned the order of the facts, is impatient for the proof of them, and desires as soon as possible to settle his opinion. You must be cautious, also, that your exposition of the case be not forgotten, through the attention of the judge being turned to something else, or fatigued with useless delay.

9. But though such digression is not always a necessary sequel to a statement of facts, it is yet frequently a useful preparation for the consideration of the question; for instance, if the case appears, at first sight, unfavourable to us; if we have to uphold a severe law; if we enforce penal inflictions; as there will then be room, as it were, for a second exordium, to prepare the judge for our proofs, or to soothe or excite him; and this may be done the more freely and forcibly in this place, as the case is already known to him. 10. With these lenitives, so to speak, we may soften whatever is offensively hard in our statement, that the ears of the judge may the more readily admit what we may have to say afterwards, and that he may not be averse to concede us justice;* for judges are not easily convinced of anything against their will. 11. On these occasions, however, the disposition of the judge must also be ascertained, that we may know whether he is more inclined to

* *Ne jus nostrum oderint.*] Ne nobis sint adversi propter juris rigorem. *Turnebus.*

law or to equity; for according to his inclination our representations will be more or less necessary.

The same subject may also serve as a kind of peroration after the question. 12. This part the Greeks call the παρέκβασις: the Latins the *egressus* or *egressio*. But such sallies, as I remarked,* are of several kinds, and may be directed to different subjects from any part of the cause; as *eulogies of men and places, descriptions of countries, recitals of occurrences true or fictitious.*† 13. Of which sort, in the pleadings of Cicero against Verres, are *the praises of Sicily,* and *the rape of Proserpine;*‡ in his speech for Caius Cornelius,* *the well-known celebration of the merits of Cneius Pompey,* which the divine orator, as if the course of his pleading had been suspended at the very name of the heroic leader, suddenly turns aside to pronounce, breaking away from the matter on which he had entered.

14. As to the definition of the παρέκβασις, it is, in my opinion, *a dissertation on any subject relating to the interest of the cause, digressing from the order of facts.* I do not see, therefore, why they assign it to that part of a speech, above all others, which immediately follows the statement of the case, any more than why they think that name belongs to a digression only when something is to be *stated* in it, as a speech may swerve from the right path in so many ways. 15. For whatever goes beyond those five parts of a speech which we have specified,‖ is a digression, whether it be an expression of *indignation, pity, detestation, reproach, apology, conciliation,* or *reply to invective.*¶ Similarly digressive is everything that does not lie within the question; all *amplification, extenuation,* and *excitement of the*

* Sect. 4.

† C. 2, § 19.

‡ III. 7, 27.

§ Of this speech only some fragments remain, which have been preserved with the commentary of Asconius Pedianus. "Caius Cornelius," says Asconius, "when tribune of the people, after incurring the displeasure of the senate by the proposal of certain laws, proposed another law by which no one was to be released from legal obligations except with the sanction of the people; a law intended to weaken the authority of the senate." *Spalding.*

‖ See iii. 9, 1.

¶ *Maledictorum refutatio.*] Since *maledicta* have no proper connexion with the matter in question. So Cic. pro Cluent. c. 23. *Doce—quid—non modò in criminis, sed in maledicti loco sit objectum.* See c. 2, sect. 27. *Spalding.*

passions; all those moral observations concerning *luxury, avarice, religion, duty,* which* contribute so much to the agreeableness and ornament of a speech, but which, however, as they are attached to cognate subjects, and naturally cohere with them, do not appear to be digressions. 16. But there are numbers of remarks introduced into matters that have no connexion with them, remarks by which the judge is excited, admonished, appeased, intreated, or commended. Instances of them are innumerable; some we carry with us ready prepared; some we utter on the spur of the moment, or from necessity; if, for instance, anything extraordinary occurs while we are speaking, as an interruption, the sudden arrival of any person, or a disturbance. 17. From such a cause Cicero was obliged to make a digression in his exordium, when he was speaking for Milo, as appears from the short speech† which he pronounced on the occasion. But he that prepares something to precede the question, and he that adds something to his proofs as in support of them, may make a somewhat longer digression. He, however, who makes a sally from the middle of his speech, ought soon to return to the point from which he started.

CHAPTER IV.

Of propositions preparatory to proof; not always necessary, § 1, 2. Sometimes very useful, 3, 4. Various kinds of propositions, and remarks on them, 5—9.

1. THERE are some writers who place the *proposition*‡ after the statement of facts, as a division of a speech on any matter for judgment.§ To this notion I have already‖ replied. In my opinion the commencement of any proof is a *proposition*, which may be advanced not only in stating the principal question, but sometimes even to introduce particular

* It is to be observed that I read *ea maximè quæ jucundam et ornatam faciunt orationem,* with Rollin. In Spalding's and other texts the *quæ* is omitted.

† *Oratiunculâ.*] This was the speech that he really delivered on behalf of Milo, and which was extant in the time of Asconius Pedianus, having been taken down on the occasion. The more elaborate speech, which we now have, was never delivered.

‡ See iii. 9, 5; 11, 27.

§ *Judicialis materiæ.*] *Orationis, quæ versetur in genere judiciali.* Capperonier.

‖ III. 9, 2

arguments, especially those which are called *ἐπιχειρήματα*.* 2. But I shall now speak of the former† kind. It is not always necessary to use it; for sometimes what the point in question is, is sufficiently manifest without any proposition whatever: for instance, if the statements of facts ends where the question begins; so that that which in arguments is commonly the recapitulation,‡ is sometimes immediately subjoined to the statement of the case: *These things§ occurred, judges, just as I have related them; the lier-in-wait was cut off; violence was overcome by violence; or rather audacity was subdued by valour.* 3. But at times it is extremely useful; especially when the fact cannot be denied, and the question is about the definition: as, in pleading for him who took the money of a private person from a temple, you would say, *The consideration is about sacrilege; it is concerning sacrilege that you have to decide;* so that the judge may understand that his only duty is to ascertain *whether that which is charged against the accused is sacrilege.* 4. It is also of use in causes that are obscure or complex, not only that they may be rendered more lucid, but also, occasionally, that they may be more striking. A proposition will produce this effect, if there be immediately subjoined to it something that may support our pleading: as, *A law has been made expressly, that whatever foreigner mounts the wall is to be punished with death; that you are a foreigner is certain; that you mounted the wall there is no doubt; what remains, then, but that you undergo the penalty?* For such a proposition enforces a confession from the opposite party, and prevents, in a great measure, delay in giving judgment, not only explaining the question, but supporting it.

5. Propositions are *single*, *double*, or *complex;* a distinction which results from more than one cause; for several charges may be combined, as when Socrates was accused of *corrupting the youth and introducing new superstitions;* or one charge may be established by several proofs, as when it was alleged against Æschines that he had acted dishonestly in his em-

* See v. 14, 14.

† That which concerns the principal question, or *state* of the cause. *Spalding.*

‡ *Summa collectio.*] Ἀνακεφαλαίωσις. *Pithœus.* In French "recapitulation." *Capperonier.*

§ Cic. pro Mil. c. 11.

bassy, *because he had spoken falsely; because he had done nothing in conformity with the directions given him; because he had tarried; because he had accepted presents.* 6. The defence may also contain several propositions; as, in an action to recover a debt it may be said, *You have no right demand it; for it was not in your power to become an agent;** *nor had he, in whose name you act, a right to have an agent; nor are you the heir of him from whom I am said to have borrowed; nor was I indebted to him.* 7. Such examples may be multiplied at pleasure; but it is sufficient to have pointed out that such is the case. If these allegations are stated singly, with proofs subjoined, they are so many distinct propositions; if they are combined, they come under the head of partition.†

8. A proposition is sometimes, also, entirely *bare*, as is generally the case in conjectural causes: *I accuse of murder; I charge with theft;* sometimes it is accompanied with a reason; as, *Caius Cornelius*‡ *has been guilty of treason against the dignity of the tribunate; for he himself, when tribune of the people, read his own law before the public assembly.*§ The proposition which we bring forward, too, is sometimes our own; as, *I accuse this man of adultery;* sometimes that of our adversary; as, *The charge against me is that of adultery;* sometimes affecting both parties; as, *The question between my opponent and me is, which of the two is the nearer of kin to a person who has died intestate.* Sometimes, moreover, we may couple opposite propositions; as, *I say thus, my adversary thus.*

9. There is a way of speaking which has, at times, the force of a proposition, though it is in reality not one; when, after having made our statement of facts, we add, *It is upon these points that you are to decide;* this being a kind of admonition to the judge to direct his attention more earnestly to the case, and, being roused as by a touch, to observe that the statement is ended and the proof commenced; so that, as we

* *Procuratori tibi esse non licuit.*] He that was *infamiâ notatus* could not be a *procurator.* Turnebus.

† Partition, with Quintilian, is not properly a portion of the pleading, but an appendix to the proofs, or preparation for them. See the next chapter. *Capperonier.*

‡ C. 3, sect. 13.

§ Contrary to the custom, which was, that the *præco* should recite the law, the *scriba* supplying him with the words. *Turnebus.*

enter upon the establishment of our allegations, he may commence, as it were, a new stage of listening.

CHAPTER V.

Partition of our matter generally useful, § 1—3. When it should be omitted, 4—9. Examples from Cicero, 10—12. As to *states* of conjecture and quality, 13—17. Artifices that may be used, 18—21. Utility of partition, and the proper qualities of it, 22—28.

1. PARTITION is the enumeration, according to their order,* of our own propositions, or those of our adversary, or both; an enumeration which some think that we should always make, because, by its aid, the cause is rendered clearer, and the judge more observant and attentive, if he knows exactly on what point we are speaking, and on what points we intend to speak afterwards. 2. Some, on the other hand, think it dangerous to a speaker, for two reasons: that some things, on which we promise to speak, may escape our memory, and others, which we may have omitted in our specification, may occur to us; but nothing of this kind can happen except to one who is utterly deficient in ability, or one who brings to his pleading nothing settled or premeditated. 3. Otherwise, what method is so plain and clear as that of a proper division of our matter? for it follows nature as a guide, so as to be the greatest aid to the memory, to prevent us from straying from our proposed course in speaking. I cannot, therefore, agree with those who think that our partition should not exceed three propositions. Doubtless, if it be too multifarious, it will escape the recollection of the judge, and perplex his attention; but it is not to be confined, as by a law, to this or that number, when a cause may possibly require more.

4. There are other reasons why we should not always adopt a partition; first, because most observations please better when they appear to be conceived on the moment, and not to be brought from home, but to spring from the subject itself as we are discussing it; and hence the common expressions, *I had almost forgotten*, *It had escaped me*, *You aptly remind me*,

* *Ordine collata.*] That is, regularly following one another; not separate. *Spalding.*

are by no means ill received. If you lay down your course of proof before-hand, all pleasure of novelty is cut off from the sequel of your speech. 5. Sometimes, too, the judge must be misled, and wrought upon by various artifices, that he may suppose something else to be intended than what is really our object. A proposition is sometimes startling, and a judge, if he sees it prematurely, dreads it as a patient dreads the surgeon's instrument before an operation is performed; but if, without any proposition being advanced before-hand, our observations come upon him when off his guard, and penetrate his mind, without any warning, when wrapt up, as it were, in itself, they will make him believe that which he would have distrusted if we had advanced it at first. 6. Occasionally, too, we should avoid not only the distinction of questions, but the mention of them altogether; the judge should have his feelings strongly moved, and his attention diverted; for to instruct is not the only duty of an orator; the power of eloquence is best shown in producing excitement But, to such an effect, that minute carefulness in division, scrupulously separated into parts,* at a time when we should endeavour to deprive the judge of the power of deciding against us, is directly opposed. 7. Are not arguments, also, that are light and weak when detached, often of great force in a body? Such arguments, accordingly, should rather be collected in a mass, and we should make a sally with them, as it were, upon the judge; an expedient which should rarely, however, be adopted, and only in case of necessity, when reasoning forces us to that which seems contrary to reasoning.† 8. In addition, it is to be considered that there is, in every division of a case, some one point of more importance than the rest, and when the judge has become acquainted with it, he is apt to disdain other points as requiring no notice. Consequently, if more charges than one are to be established or overthrown, a partition is both advantageous and agreeable; in order that what we have to say on each head may distinctly be shown; but if we have

* *Tenuis illa et scrupulosè in partes secta divisionis diligentia.*] Such is the reading of Spalding, who observes that all the manuscripts, and all editions before that of Badius Ascensius, have *secta*. Capperonier, and most of the later editors, have adopted *sectæ* from Badius. *Secta diligentia* is an expression with which we can hardly feel content, but, as Spalding asks, if you read *sectæ*, what will you do with *tenuis*?

† Comp. c. 2, sect. 85.

to combat one charge by various arguments, it is needless 9. Thus, if you should make such a division as this, *I shall show that the accused, for whom I plead, is not of such a character that he can be thought to have committed murder; I shall show that he had no motive for committing murder; I shall show that at the time the murder was committed he was beyond the sea,* all that you might prove before that which you place last, must necessarily appear useless; 10. for the judge is anxious to come to the strongest point of all; and if he is of a patient temper, he will silently hold the advocate bound to adhere to his stated division, or, if he be pressed with business, or be a man of some dignity, or of rude manners, will call upon him, with some reproachful remark, to adhere to it. 11. Some have been found, accordingly, to disapprove of Cicero's partition in his speech for Cluentius, where he promises, first of all, that *he will show that no man was ever brought to judgment for greater crimes, or on stronger evidence, than Oppianicus; next, that the preliminary inquiries* were conducted by those very judges by whom he was condemned; lastly, that the judgment was influenced by money, not on the side of Cluentius, but by the opposite party;* such a division being needless, because, if the third point could be proved, there was no necessity for introducing the first or second. 12. On the other hand, no one will be so unjust or foolish as not to admit that Cicero adopted an excellent division in his pleading for Muræna: *I perceive, judges, that of the whole accusation there are three heads; one concerned with censure of my client's morals; another with his competition for honours; and a third with charges against him for bribery;* for he thus exhibits the cause with the utmost clearness, and does not render one head useless by another.

13. Most writers also hesitate respecting the following mode of defence: *If I killed the man, I killed him justly; but I did not kill him;*† for "to what purpose," it is asked, "is the first proposition, if the second can be proved? they are at variance with one another, and while we advance both, credit is given to neither." This is indeed partly true; as we ought to rest on the second only, provided it be incontrovertible. 14. But if we have any apprehension as to the

* *Præjudicia.*] See book v. c. 1 and 2, and Smith's Dict. of Gr. and Rom. Ant. Art. Præjudicium.

† Comp. iii. 6, 10.

stronger, we may very well use the support of both; for different judges are moved by different arguments; and he who believes that the deed was done, may think it just; while he who will not allow it to be just, will perhaps feel convinced that it was not done. An unerring hand may be content with one javelin, but, by an uncertain hand, several should be thrown, in order that chance may have its influence. 15. Cicero, in defending Milo, shows admirably, in the first place, that Clodius was a lier in-wait, and then adds, superabundantly as it were, that even if he had not been so, a citizen of such a character might have been slain with great merit and honour on the part of the slayer. 16. Yet I would not altogether condemn that order which I just now mentioned;* because some arguments, though hard in themselves, may yet be of use to soften others that are to follow. The common saying, that *we must ask more than what is just in order to get what is just*,† is not without foundation in reason. 17. No one, however, is to take it in such a sense as to suppose that everything may be attempted; for the Greeks very wisely instruct us that *what cannot be accomplished ought not to be tried*.‡ But whenever we adopt that double mode of defence of which I am speaking, we ought to make it our object to draw from the first head confirmation for the second; for he who might even have confessed without danger, may appear to have no motive for speaking falsely when he denies.

18. We must also take good care, whenever we suspect that the judge desires some other proof than that which we are advancing, to promise that we will fully and speedily afford him satisfaction on the point; especially if it affects our client's honour. 19. But it frequently happens that a cause, in itself far from honourable, is supported by the letter of the law; and, in this case, that the judges may not listen with unwillingness or disapprobation, they must be often reminded that *the vindication of the integrity and honour of our client will follow; that they have but to wait a little, and allow us to proceed in order*. 20. We may pretend also, occasionally, to say some things against the wish of our client, as Cicero does

* Sect. 13.

† See Erasmus, Chiliad. ii. 3, 26, who thinks that the saying was originally used of people offering goods for sale.

‡ Diog. Laert. i. 70.

in his speech for Cluentius, in regard to the law respecting the duties of judges;* sometimes we may stop, as if we were interrupted by our client; sometimes we may address ourselves to him, and entreat him to allow us to take our own course. 21. Thus we shall gradually make an impression on the mind of the judge; who, while he trusts that the honour of our client is going to be vindicated, will listen with less reluctance to our more startling arguments; and, when he has received some impression from these, the maintenance of our client's honour will be the easier for us. Thus the two points will support each other; and the judge, trusting to our vindication of character, will be more attentive to the point of law, and, the point of law being established, will be more disposed to listen to our vindication of character.

22. But though partition is not always necessary, or even advantageous, yet, when it is seasonably adopted, it contributes great lucidity and agreeableness to a speech; for it not only causes what is stated to become clearer, by drawing certain particulars out of the crowd, as it were, and placing them full in the sight of the judges, but relieves the attention by fixing a definite termination to certain parts, as distances on a road, marked by inscribed stones, appear greatly to diminish the fatigue of travellers. 23. For it is a gratification to learn the measure of the labour which we have acomplished; and to know how much remains, encourages us to proceed with greater spirit to the conclusion; nothing, indeed, need seem long, when it is understood where the end is. 24. It was not without justice that Quintus Hortensius gained great praise for his exactness in division; though Cicero‡ sometimes gently laughs at his partitions as being counted upon his fingers; for, as there is moderation requisite in gesture,* so we should, even with greater reason, avoid a too precise, and, as it were, jointed, division of our matter. 25. Minute sections, which, instead of being *members*, are *bits*, detract greatly from the

* This law, observes Gesner, respecting the bribery of judges, was directed against the senators, and Cluentius might have defended himself from the charge of bribery by saying that he was not a senator.

† Cic. Brut. c. 88; pro Quintio, c. 10; Divinat. in Cœcil. c. 14, where he says *membra dividere cœperit* (Hortensius) *et in digitis suis singulas partes causæ constituere.*

‡ This touch on gesture is in allusion to Hortensius's counting on his fingers. *Spalding.*

weight of a speech; and those who are eager for the praise of such distinction, are apt, that they may be thought to have made nice and numerous divisions, to introduce what is wholly superfluous, and to cut asunder what is naturally united; they make their parts, not so much *more in number*, as *less in bulk;* and, after a thousand partitions, fall into that very obscurity against which partition was invented.

26. The proposition of a cause, whether divided or single, ought, whenever it can be introduced with advantage, to be, above all, plain and clear; (for what can be more disgraceful than to make that *obscure* which is adopted for no other purpose than that other parts may *not* be *obscure*?) and it should also be brief, and not loaded even with a single useless word; for we must remember that we have not to show what we are saying, but what we are going to say. 27. We must be cautious, too, that nothing may be deficient in it, and nothing redundant. The most frequent cause of redundancy is, when we divide into species what it would be sufficient to divide into genera; or when, after mentioning the genus, we add species to it, as if we should speak of *virtue, justice, temperance,* when justice and temperance are but species of virtue.

28. The first step in partition is, to distinguish what is admitted and what is disputed. Next, in regard to what is admitted, to distinguish what our adversary admits, and what we admit; and, in respect to what is disputed, to specify what our propositions are, and what those of our opponent. But what is most culpable, is, not to treat of your several points in the order in which you have arranged them.

BOOK V.

INTRODUCTION

Some rhetoricians have thought that the only duty of an orator is *to teach;* others have called this his chief duty. The necessity for this book.

1. THERE have been authors,* and some, indeed, of high reputation, who have thought that the sole duty of an orator is *to inform.*† Excitement of the feelings, they considered, was to be prohibited, for two reasons; first, because all perturbation of the mind is an evil;‡ and, secondly, because it is inexcusable for a judge to be diverted from the truth by pity, anger, or any similar passion; and to aim at pleasing the audience, when the object of speaking is to gain victory, they regarded not only as needless in a pleader, but scarcely worthy even of a man. 2. Many, too, who doubtless did not exclude those arts from the department of the orator, considered, nevertheless, that his proper and peculiar office was to establish his own propositions and to refute those of his adversary. 3. Whichsoever of these opinions is right, (for I do not here offer my own judgment,) this book must appear, in the estimation of both parties, extremely necessary, as the entire subject of it is proof and refutation; to which all that has hitherto been said§ on judicial causes is subservient. 4. For there is no other object either in an introduction or a narrative than to prepare the judge; and to know the *states*‖ of causes, and to contemplate all the other matters of which I have treated above,¶ would be useless, unless we proceed to proof. 5. In fine, of the five parts** into which we have distinguished judicial pleading, whatever other may occasionally be unnecessary in a cause, there certainly never occurs a suit in which proof is not required.

As to directions regarding it, I think that I shall make the

* The commentators rightly refer to Aristotle, Rhet. i. 1, 4. *Spalding.*

† See iv. 5, 6.

‡ According to the Stoics.

§ B. iii. c. 9, *seqq*

‖ See b. iii. c. 6.

¶ He refers especially, I consider, to the whole of the eleventh chapter of the third book. *Spalding.*

** See iii. 9, 1; iv. 3, 15.

best division of them, by first showing what are applicable to all kinds of questions, and next, by enlarging on what are peculiar to the several sorts of causes.*

CHAPTER I.

Inartificial proofs. Eloquence not inefficient in regard to them.

1. In the first place, then, the division which has been laid down by Aristotle† has gained the approbation of almost all rhetoricians; namely, that there are some proofs which an orator adopts that are *unconnected with the art* of speaking, and others which *he himself extracts*, and, as it were, produces, *from his cause*. Hence they have called the one sort ἄτεχνοι, "inartificial," and the other ἔντεχνοι, "artificial." 2. Of the former kind, are *precognitions*, *public reports*, *evidence extracted by torture*, *writings*, *oaths*, and *the testimony of witnesses*, with which the greater part of forensic pleadings are wholly concerned. But though these species of proof are devoid of art in themselves, they yet require, very frequently, to be supported or overthrown with the utmost force of eloquence; and those writers, therefore, appear to me highly deserving of blame, who have excluded all this kind of proofs from the rules of art. 3. It is not, however, my intention to collect all that is usually said for and against these points; for I do not design to lay down common places, which would be a task of infinite labour, but merely to point out a general method and plan. The way being shown, each must exert his ability, not only to follow it, but to find out similar courses, as the nature of particular cases may require; since no one can speak of all kinds of causes, even among such as have occurred, to say nothing of such as may occur.

* That is, of judicial causes. There is no reference here, as Spalding observes, to the division mentioned in iii. 3, 15, and iii. 4, 15.

† Rhet. i. 1, 2.

CHAPTER II.

Previous judgments. The authority of those who deliver them to be considered. Similitude in cases; how to be refuted.

1. As to *precognitions*, the whole matter of them ranges itself under three heads; first, *cases* which have been already decided *under similar circumstances*, and which may more properly be termed *precedents;* as *about wills of fathers which have been annulled* or *ratified in opposition to their children;* secondly, *judgments relative to the cause itself*, (from which also is derived the name,) such as those which are said to have been pronounced upon *Oppianicus*,* and those of the senate *upon Milo*;† or, thirdly, when sentence has already been given on the same affair, as in the case of persons that have been sent out of the country,‡ of appeals in regard to personal liberty,§ and of divisions in the judgments of the centumviri, when they have been separated into two parties.‖ 2. Precognitions are established chiefly by two things; the *authority* of those who have given judgment, and the *similitude* of the cases in question; as for the annulling of them, it is rarely obtained by reproaching the judges, unless there be a manifest error in them; for each of the judges wishes the sentence of another to stand firm, remembering that he himself is also to pronounce a sentence, and being unwilling to offer a precedent which may recoil upon himself. 3. The pleader must have recourse,

* Cicero pro Cluent. c. 17, *seqq.* See also iv. 5, 11.

† Cic. pro Mil. c. 5.

‡ Regius and Gesner very properly refer to Digest. xlviii. 22, tit. *de interdictis, et relegatis et deportatis;* also xxiii. *de sententiam passis et restitutis.* Spalding.

§ *Assertione secunda.*] Whoever thought that he was unjustly detained in slavery might procure an *assertor* to make application for his liberty by a judicial process, he himself being unable to plead his own cause. This was called *causa liberalis.* If the *assertor* was unsuccessful on the first occasion, he might apply a second and a third time; Comp. xi. 1, 78; but this privilege of repeating the application was abolished by Justinian, Codic. vii. 17, 1, 1. *Spalding.*

‖ *Partibus centumviralium, quæ in duas hastas divisæ sunt.*] With *centumviralium* understand *causarum.* *Hasta*, a spear, the mark of authority, is here put for *judicium*, a company of judges. See xi. 1, 78. Pliny speaks of *quadruplicia centumviralia*, Epist. i. 18, 3; vi. 33, 2. These several divisions or *hastæ* gave judgment on the same cause. *Spalding.*

therefore, in the first two cases, if the matter allow, to the discovery of some dissimilarity in the cases; (and there is scarcely one exactly like another in all particulars;) or, if that course be impossible, or the cause be the same, some negligence in the pleadings must be exposed, or we must complain of the weakness of the parties against whom judgment was given, or influence that corrupted the witnesses, or of public odium, or ignorance; or we must find something that has since occurred to affect the cause. 4. If none of these allegations be possible, we may observe that many motives on trials have led to unjust sentences, and that through such influence *Rutilius* was condemned, and Clodius and Catiline† acquitted.* The judges may also be solicited rather to examine the question themselves than to rest their faith on the verdict of others. 5. But against decrees of the senate, and the ordinances of princes or magistrates, there is no remedy, unless some difference, however small, be discovered in the cases, or some subsequent determination of the same persons, or personages of the same dignity, at variance with the former. If nothing of the kind be discoverable, there will be no case for judgment.

* See xi. 1, 12. Publius Rutilius Rufus was found guilty of extortion, A.U.C. 662, in consequence of a conspiracy of the *publicani* against him, he having defended Asia from their injustice. His property, being confiscated, was found to be too small to pay the fine laid upon him, and, at the same time, to have been obtained by the most honourable means. He went into voluntary exile at Mitylene, and afterwards at Smyrna, where he received the highest honour from all the people of Asia, and was presented with greater wealth than he had previously possessed. See Dion Cass. p. Reim. 44. He was a Stoic, and pupil of Panætius, and Seneca frequently mentions him in conjunction with Socrates as an example of wisdom and fortitude in enduring adversity. See Sen. de Prov. c. 3; de Tranq. Anim. c. 15; de Vit. Beat. c. 18; de Benef. v. 17, 37; Epist. 24, 67, 79; also Duker ad Flor. iii. 17, 3; Vell. Pat. ii. 13, 2. Ernesti Clav. Cic. v. Rutilius; Schneider ad Cic. Brut. c. 30. *Spalding.*

† Cicero joins the same three names together in his speech against Piso, c. 39. See iv. 2, 88. Catiline was accused of connexion with a vestal virgin, A.U.C. 682, and of extortion, A.U.C. 688. From the first charge he escaped by the influence of Terentia, the wife of Cicero, whose sister Fabia is said to have been the vestal with whom he was concerned; of the second he was acquitted through the prevarication of Clodius the accuser; see Cic. in Fragm. apud Asc. Pedian. in Orat. Cic. contra Anton. p. 145, 151. *Spalding.*

CHAPTER III.

Of public report.

Common *fame* and *report*, one party will call the consent of the whole people, and a sort of public evidence; the other will term it mere talk without any certain authority, to which malignity has given rise, and credulity augmentation; an evil which may affect every man, even the most innocent, through the artifice of enemies spreading falsehood. Examples will not be wanting to support either representation.

CHAPTER IV.

Of evidence exacted by torture.

1. The case is similar with regard to evidence exacted *by torture*, which is a frequent subject of discussion; as one side will call torture an infallible means for discovering truth, the other will represent it as a cause of the utterance of falsehood; because to some persons ability to endure makes lying easy, to others weakness renders it necessary.* To what purpose should I say more on this subject? The pleadings of the ancients and the moderns are alike full of instances. 2. Yet under this head there will be circumstances peculiar to certain cases; for if the question be about applying the torture, it will make a great difference *who it is that demands it*, and *whom he demands* or *offers for it*, and *against whom*, and *from what motive;* or, if the torture has been applied, *who presided at it, who it was that was tortured*, and *how; whether he uttered what was incredible or consistent; whether he persisted in his first assertions, or made any change in them; whether he confessed at the commencement of the torture, or after it had proceeded for some time;* questions which are as numberless as the variety of cases.

* Comp. c. 10, sect. 70.

CHAPTER V.

Of the refutation of written testimony.

1. Against *writings*, too, pleaders have often spoken, and must often speak, as we know that it is common for documents not only to be set aside, but to be charged with being forged. As there must, in the latter case, be either *guilt* or *ignorance* on the part of those who signed them, ignorance will be the safer and lighter charge; because the number of those whom we actually accuse will be smaller. 2. But the whole of such a proceeding* must rest on arguments drawn from the particular case; if, for example, it is difficult to prove, or even incredible, that what the writing states occurred; or if (as more frequently happens) it may be overthrown by proofs equally inartificial; if he to whose prejudice the deed was signed, or any one of those who signed it, can be said to have been absent at the time, or to have died before it; if dates disagree; or if anything that occurred before or after is at variance with what is written. Even a mere *inspection* is often sufficient to discover forgery.

CHAPTER VI.

On offering to take an oath, and receiving that of the opposite party, § 1, 2. Arguments on the subject, 3—5. Judgment of the experienced respecting it, 6.

1. As to an *oath*, parties going to law either offer their own, or refuse to receive that of their adversary when offered; or they require one from him, or refuse to take one when required from themselves. For a person to offer to take an oath himself, without allowing his opponent to take his, is commonly a sign of bad faith. 2. He, however, who shall do so, must either shelter himself under such purity of moral conduct as to make it incredible that he will commit perjury, or under the influence of religion; (in regard to which he will gain more credit if he act in such a manner as not to appear to come forward

* *Hoc ipsum.*] By these words he means *omne refellendi et accusandi tabulas negotium.* Spalding.

with eagerness to take his oath, and yet not to shrink from taking it;) or on the small importance of the cause, should such be its nature, for the sake of which he would hardly incur the divine displeasure; or if, in addition to other means of gaining his cause, he offers his oath, superabundantly, as it were, as the testimony of a pure conscience.

3. He who shall be unwilling to receive the oath of his adversary, will allege the inequality of the terms, and remark that the fear of taking an oath is lightly regarded by many, as even philosophers have been found to deny that the gods pay any attention to human affairs; and that he who is ready to swear without any one putting him to his oath, is disposed to give sentence himself in his own cause, and to show how light and easy a thing he considers the obligation by which he offers to bind himself. 4. But he who offers to accept his adversary's oath, besides appearing to act with moderation, as he makes his opponent the arbiter of the cause, relieves the judge also, to whom the decision belongs, from a heavy responsibility, since he would certainly rest rather on another man's oath than on his own.† 5. Hence the refusal to take oath becomes the more difficult, unless the affair in question happens to be such that it cannot be supposed to be known to the party. If this excuse be wanting, there will be but one course left for him, which is to say that odium is sought to be excited against him by his opponent, whose object is to make it appear that he has ground for complaint in a cause in which he cannot obtain victory; 'and, accordingly, though a dishonest man would have eagerly availed himself of such a proposal, he himself would rather prove what he asserts than leave it doubtful in the mind of any one whether he were guilty of perjury.

6. But, in my younger days, men who had grown old in pleading used to lay it down as a rule that *we should never give our opponent the option of taking his oath;* as also that he should never be allowed the choice of a judge;‡ and that a judge

* If he himself is at the pains of bringing forward many arguments and proofs, and the other party is excused from doing anything more than taking his oath. *Spalding.*

† For the judges took an oath to give just judgment, and whatever sentence they pronounced was pronounced on their oath. *Spalding.*

‡ In the appointment of the judges by lot, we ought not to yield to the wish and option of our adversary; nor in choosing an arbiter in a case. *Turnebus.*

should not be taken from the counsellors* of the opposite party; since, if it was thought dishonourable in an advocate to speak against his client, it should assuredly be considered more dishonourable to do anything that would injure him.

CHAPTER VII.

Written evidence; how to be refuted, § 1, 2. Modes of proceeding with regard to witnesses that appear in person, 3—6. An intimate knowledge of the cause necessary, 7, 8. How voluntary witnesses should be produced, 9—11. Caution requisite in respect to them, 12—14. How a pleader must act with regard to a witness whom he knows to be adverse or favourable to the accused, 15—19. How he must act in regard to one whose disposition he does not know, 20, 21. Of the interrogation of witnesses, 22—32. Of the collision between written and oral testimony, 32—34. Of supernatural testimony, 35—37.

1. The greatest efforts of pleaders, however, are employed about *evidence*. Evidence is given either in *writing*, or by *witnesses present in court*. The opposition to writings is the more simple; for shame may seem to have had less preventive power in the presence of only a few witnesses,† and absence may be unfavourably represented as intimating self-distrust. If the character of the writer is open to no reflection, we may perhaps throw some discredit on that of the witnesses to it. 2. Besides, a secret feeling is entertained unfavourable to all who offer evidence in writing, as no man gives it in that way unless of his own free-will,‡ and thus shows that he is no friend to the party against whom he deposes. Yet a pleader on the opposite side should not be ready to admit that a friend may not speak truth on behalf of a friend, or an enemy against

* *Ex advocatis.*] By this word we are not to understand pleaders, but those persons whom Asconius, in Divinationem, p. 20, mentions as attending their friends on trials, either to assist them in legal difficulties, or to support them by their presence and countenance. *Spalding.*

† Less than it would have in an open court where testimony is given orally.

‡ Other witnesses were summoned, and obliged to give evidence at a certain time: those who gave their testimony in writing gave it voluntarily. *Turnebus.*

an enemy, if the credit of either be unimpeached. But the subject, in both its bearings, furnishes much matter for consideration.

3. With witnesses who are *present* there may be great contention, and we accordingly engage, whether against them or for them, with the double force of regular speeches * and interrogatories. 4. In *regular speeches*, we commonly offer observations, first of all, for and against witnesses in general. This is a common topic for argument; one side maintaining that there is no evidence stronger than that which rests on human knowledge, and the other, to detract from the credit of such knowledge, enumerating every cause by which testimony is rendered false. 5. The next step is, when pleaders make special attacks, though on bodies of men; for we know that the testimonies of whole nations have been invalidated by orators, as well as whole classes of evidence; as in the case of hear-say witnesses, for pleaders maintain that they are not in reality witnesses, but mere reporters of the words of unsworn individuals; and in cases of extortion, those who swear that they have paid money to the accused, are to be regarded as parties in the prosecution, not as witnesses. 6. Sometimes a pleader's remarks are directed against individual witnesses; a kind of attack which we find in many pleadings, sometimes combined with a defence, and sometimes given separately, as that of Cicero on the witness Vatinius.†

7. Let me therefore consider the whole subject, as I have taken upon myself to attempt the entire education of an orator; otherwise, the two books composed on this head by Domitius Afer‡ would have been sufficient, a rhetorician whom I attended with great respect when he was old and I was young, so that the contents of his books were not only read by me, but learned from his own mouth. He very justly makes it a rule that it is the great business of an orator, in regard to this part of his cause, to gain a thorough knowledge of the whole of it; but it is a rule to be observed in regard to every part.

* *Actionum.*] Compare sect. 8, where *oratio perpetua* is used as equivalent to *actio*. Spalding.

† He had given evidence against Publius Sextius when defended by Cicero, who, Epist. ad Lentulum i. 9, and ad Q. Fratr. ii. 4, observes that he attacked him with great vehemence on that occasion. But the speech is extant. *Gesner.*

‡ See i. 5, 24.

8. How this knowledge may be attained, I shall show when I arrive at the part of my work destined for that subject.* Such knowledge will suggest matter for questions, and supply, as it were, weapons to the hand; and it will also show us for what the mind of the judge should be prepared by our speech; as it is by a regular address that the credit of witnesses should be either established or overthrown; since every judge is affected by testimony just as he has been previously influenced to believe or disbelieve it.

9. Since, then, there are two sorts of witnesses, those who appear voluntarily, and those whom the judge commonly summons on public trial according to law, (of the first of which kinds either party may avail themselves, while the latter is conceded only to accusers,) let us distinguish the duty of the pleader who produces witnesses from that of him who refutes their testimony.

10. He that produces a *voluntary* witness, may know what he has to say, and consequently appears to have the easier task in examining him. But even this undertaking requires penetration and watchfulness; and we must be cautious that the witness may not appear timid, or inconsistent, or foolish; 11. for witnesses are confused, or caught in snares, by the advocates on the opposite side, and, when they are once caught, they do more harm than they would have done service if they had been firm and resolute. They should therefore be well exercised before they are brought into court, and tried with various interrogatories, such as are likely to be put by an advocate on the other side. By this means they will either be consistent in their statements, or, if they stumble at all, will be set upon their feet again, as it were, by some opportune question from him by whom they were brought forward. 12. But even in regard to those who are consistent in their evidence, we must be on our guard against treachery; for they are often thrown in our way by the opposite party, and, after promising everything favourable, give answers of a contrary character, and have the more weight against us when they do not refute what is to our prejudice, but confess the truth of it. 13. We must inquire, therefore, what motives they appear to have for declaring against our adversary; nor is it sufficient to know that they *were* his enemies; we must ascertain

* B. xii. c. 3.

whether they have ceased to be so; whether they may not seek reconciliation with him at our expense; whether they have been bribed; or whether they may not have changed their purpose from penitential feelings; precautions, not only necessary in regard to witnesses who know that which they intend to say is true, but far more necessary in respect to those who promise to say what is false.* 14. For they are more likely to repent, and their promises are more to be suspected; and even if they keep to their word, it is much more easy to refute them.

15. Of witnesses who are *summoned* to give evidence, some are willing to hurt the accused party, and some unwilling; and the accuser sometimes knows their inclination, and is sometimes ignorant of it. Let us suppose for the moment that he knows it; yet, in either case, there is need of the greatest circumspection on the part of him who examines them. 16. If he find the witness disposed to prejudice the accused, he ought to take the utmost care that his disposition may not show itself; and he should not question him at once on the point for decision, but proceed to it circuitously, so that what the examiner chiefly wants him to say, may appear to be wrung from him. Nor should he press him with too many interrogatories, lest the witness, by replying freely to everything, should invalidate his own credit; but he should draw from him only so much as it may seem reasonable to elicit from one witness. 17. But in the case of one who will not speak the truth unless against his will, the great happiness in an examiner is, to extort from him what he does not wish to say; and this cannot be done otherwise than by questions that seem wide of the matter in hand; for to these he will give such answers as he thinks will not hurt his party; and then, from various particulars which he may confess, he will be reduced to the inability of denying what he does not wish to acknowledge. 18. For as, in a set speech, we commonly collect detached arguments, which, taken singly, seem to bear but lightly on the accused, but by the combination of which

* Rollin wishes Quintilian to be thought guiltless of tolerating, or rather recommending, dishonesty and fraud, referring us to sect. 32 of this chapter. But I fear that Rollin has no just ground for what he says; for in all that Quintilian here remarks about witnesses, (see especially sect. 26,) there are not many indications of a desire to adhere to strict probity. *Spalding.*

we succeed in proving the charge, so a witness of this kind must be questioned on many points regarding antecedent and subsequent circumstances, and concerning places, times, persons, and other subjects; so that he may be brought to give some answer; after which he must either acknowledge what we wish, or contradict what he himself has said. 19. If we do not succeed in that object, it will then be manifest that he is unwilling to speak; and he must be led on to other matters, that he may be caught tripping, if possible, on some point, though it be unconnected with the cause; he may also be detained an extraordinary time, that by saying everything, and more than the case requires, in favour of the accused, he may make himself suspected by the judge; and he will thus do no less damage to the accused than if he had stated the truth against him. 20. But if (as we supposed in the second place) the accuser be ignorant of the witness's disposition, he must sound his inclination cautiously, interrogating him, as we say, step by step, and leading him gradually to the answer which is necessary to be elicited from him. 21. But as there is sometimes such art in witnesses, that they answer at first according to an examiner's wish, in order to gain greater credit when they afterwards speak in a different way, it is wise in an orator to dismiss a suspected witness before he does any harm.

22. For advocates that appear on behalf of defendants, the examination of witnesses is in one respect *more easy*, and in another *more difficult*, than for those who are on the side of the prosecutor. It is *more difficult* on this account, that they can seldom or ever know, before the trial, what the witness is going to say; and it is *more easy*, inasmuch as they know, when he comes to be questioned, what he has said. 23. Under the uncertainty, therefore, which there is in the matter, great caution and inquisition is necessary, to ascertain what sort of character he is that prosecutes the defendant; what feeling he entertains against him; and from what motives: and all such matters are to be exposed and set aside in our pleading, whether we would have the witnesses appear to have been instigated by hatred, or by envy, or by desire of favour, or by money. If the opposite party, too, produce but few witnesses, we may reflect on their *small number;* if they are extraordinarily numerous, we may insinuate that they are *in conspiracy;* if they are of humble rank, we may speak with contempt of their

meanness; if persons of consequence, we may deprecate their *influence.* 24. It will be of most effect, however, to expose the motives on which the witnesses speak against the defendant, which may be various, according to the nature of causes and the parties engaged in them; for to such representations as I have just mentioned, the opposite party can answer with common-place arguments; as, when the witnesses are few and humble, the prosecutor can boast of his simple honesty, in having sought for none but such as were acquainted with the case in hand; while to commend a large number, or persons of consideration, is a somewhat easier task. 25. But occasionally, as we have to commend witnesses, so we have to decry them, whether their testimony be read in our pleading, or they be summoned to give it personally.* Such attempts were more easy and frequent in the times† when the witnesses were not examined after the pleading was ended. As to what we should say against the witnesses respectively, it can only be drawn from their individual characters.

26. The manner of questioning witnesses‡ remains to be considered. In this part of our duty, the principal point is to know the witness well; for if he is timid, he may be frightened; if foolish, misled; if irascible, provoked; if vain, flattered; if prolix, drawn from the point. If, on the contrary, a witness is sensible and self-possessed, he may be hastily dismissed, as malicious and obstinate; or he may be confuted, not with formal questioning, but with a short address from the defendant's advocate; or he may be put out of countenance, if opportunity offer, by a jest; or, if anything can be said against his moral character, his credit may be overthrown by infamous charges. 27. It has been advantageous, on certain occasions, not to press too

* *Aut recitatis in actione aut nominatis testibus.*] Gesner hesitates how to interpret this passage; Spalding observes that it is manifestly corrupt. Gesner inquires whether *recitatis testibus* may be equivalent to *recitatis eorum testimoniis;* but for such interpretation there is no authority. Spalding thinks that we should read *aut recitatis in actione testationibus, aut nominatis testibus.*

† What times those were, it is not easy to say. That witnesses were examined in the age of Cicero, either before or during the pleadings, is not apparent either from his speeches or from the testimony of any other writers. *Spalding.*

‡ On the side of the defendant. Quintilian has already made many observations concerning the examination of witnesses, but with respect to the side of the prosecutor. *Spalding.*

severely on men of probity and modesty; for those who would have fought against a determined assailant are softened by gentle treatment.

Every question is either about some point within the cause or on some point without it. On matters within the cause, the advocate of the accused, as we also directed the accuser,* may frequently, by putting questions a little widely, and on subjects from which no suspicion will arise, and by comparing previous with subsequent answers, reduce witnesses to such a dilemma as to extort from them against their will what may be of service to his own cause. 28. On this point there is certainly no instruction or exercise given in the schools; and excellence in it depends rather on natural acuteness, or experience, than anything else. If any model, however, ought to be pointed out for imitation, the only one that I can recommend is that which may be drawn from the dialogues of the Socratic philosophers, and especially Plato, in which the questions are so artful, that, though the respondent answers correctly to most of them, the matter is nevertheless brought to the conclusion which the questioner wishes to establish. 29. Fortune sometimes favours us, by causing something to be said by a witness that is inconsistent with the rest of his evidence; and sometimes (as more frequently happens) she makes one witness say what is at variance with the evidence of another; but an ingenious mode of interrogation will often lead methodically to that which is so frequently the effect of chance.

30. On matters *without the cause*, also, many serviceable questions are often put to a witness; as concerning the character of other witnesses; concerning his own; whether anything dishonourable or mean can be laid to the charge of any of them; whether they have any friendship with the prosecutor, or enmity against the defendant; in replying to which they are likely to say something of which we may take advantage, or may be convicted of falsehood or malevolence. 31. But all questioning ought to be extremely circumspect, because a witness often utters smart repartees in answer to the advocates, and is thus regarded with a highly favourable feeling by the audience in general. Questions should be put, too, as far as possible, in familiar language, that the person under examination, who is very frequently illiterate, may clearly under-

* Sect. 17, 18.

stand, or at least may not pretend that he does not understand; an artifice which throws no small damp on the spirit of the examiner.

32. As to those disgraceful practices of sending a suborned witness to sit on the benches of the opposite party, that in being called from thence he may do him the more damage, either by speaking directly against the person on whose side he had placed himself, or by assuming, after having appeared to benefit him by his evidence, airs of impudence and folly, by which he not only discredits his own testimony, but detracts from the weight of that of others who may have been of service; I mention them, not that they may be adopted, but that they may be shunned.

There is frequently a collision between written attestations on the one side and the witnesses who appear in person on the other; and this furnishes matter of debate for both parties; the one resting their arguments on the oaths of the witnesses, and the other on the unanimity of those who signed the depositions. 33. There is often a question, too, between the witnesses and the arguments; it being argued, on the one side, that there is in the witnesses knowledge of facts and regard for their oaths, and in the arguments nothing but mere subtlety; on the other side, that witnesses are procured by favour, fear, money, malice, hatred, friendship, or solicitation, while arguments are drawn from the nature of the subject; that in hearing witnesses the judge trusts to himself, in listening to arguments, to another. 34. Such questions are common to numbers of causes; they have always been, and always will be, subjects for violent discussion.

Sometimes there are witnesses on both sides, and the question arises, with regard to themselves, *Which of them are the most respectable?* with regard to the cause, *Which of them have given the most credible evidence?* and, with regard to the litigating parties, *Which may have had most influence over the witnesses?*

35. To these kinds of evidence, if any one wishes to add what are called supernatural testimonies, from responses, oracles, and omens, let him be reminded that there are two modes of treating them, the one *general*, in respect to which there is an eternal dispute between the Stoics and Epicureans, *whether the world is governed by a divine providence;* the other *special*, in

reference to* certain parts† of supernatural evidence, as they happen severally to affect the question. 36. For the credit of *oracles* may be established or overthrown in one way, and that of *soothsayers*, *augurs*, *diviners*, and *astrologers*, in another, as the nature of the things themselves is entirely different.

In supporting or demolishing such circumstances in a cause the voice of the pleader has much to do; as if, for instance, expressions have been uttered under the effects of wine, or in sleep, or in madness, or if information has been caught from the mouth of children ;‡ for in regard to all such individuals, one party will say that they do not feign, and the other that they mean nothing.

37. The mode of proof by witnesses may not only be offered with great effect, but may also be greatly missed where it is not produced: *You gave me the money: who counted it? where? whence did he come? You accuse me of poisoning: where did I buy the poison? from whom? for how much? by whose agency did I administer it? who had any knowledge of the deed?* Almost all these points Cicero discusses in his speech for Cluentius under a charge of poisoning.

Such are the remarks which I have ventured to offer, as briefly as I could, concerning *inartificial* proofs.

CHAPTER VIII.

Artificial proofs too much neglected, § 1—3. There are certain particulars common to all kinds of proofs, 4—7.

1 The other sort of proofs, which come wholly under the head of *art*, and consist in matters adapted to produce belief, is, for the most part, either altogether neglected, or very lightly touched upon by those rhetoricians who, avoiding argu-

* All the texts have *contra*, but we ought evidently to read, as Spalding observes, *circa*.

† As when we inquire, for example, whether a knowledge of the future can be obtained by inspecting the entrails of victims, or not. *Turnebus.*

‡ The relative *quos*, which Quintilian here uses, does not refer only to *parvulos* immediately preceding it, but also to people intoxicated, sleeping, &c. *Spalding.*

ments, as repulsive and rugged, repose themselves in more agreeable spots, and, (like those who are said by the poets, on being charmed with the taste of a certain herb among the Lotophagi, or with the song of the Sirens, to have preferred pleasure to security,) while pursuing an empty semblance of glory, fail to obtain that success for which eloquence is exerted.

2 But other efforts of oratory, which run through the continued course of a speech, are designed as aids or embellishments to the arguments of a cause, and add to those sinews, by which it is strengthened, the appearance of a body, as it were, superinduced upon them; so that if anything is said to have been done, perchance, through anger, or fear, or covetousness, we can expatiate somewhat fully on the nature of those passions; and, in similar accessory parts, we praise, blame, exaggerate, extenuate, describe, deter, complain, console, exhort. 3. Such oratorical efforts may be of great service in treating matters which are certain, or of which we speak as being certain; and I would not deny that there is some advantage in pleasing, and very much in exciting the feelings; but pleasure and excitement have the most effect when the judge thinks that he has acquired a full knowledge of the cause; knowledge which we cannot convey to him but by arguments and by every other means in support of facts.

4. But before I distinguish the different sorts of artificial proofs, I think it necessary to intimate that there are certain qualities common to all kinds of proof. For there is no question which does not relate either to a *thing* or to a *person;* nor can there be any grounds for argument, except respecting matters that affect things or persons; and these matters are either to be considered by themselves or referred to something else; 5. nor can there be any proof except from things *consequent* or *opposite*,* which we must seek either in the time that *preceded* the

* *Aut ex consequentibus aut ex repugnantibus.*] Regius thought that in this passage ought to be inserted *ex antecedentibus* in conformity with Aristotle Analyt. prior. i. 27; and we may observe that Quintilian himself, vi. 3, 66, in speaking of the topics from which laughter may be elicited, specifies consequents, antecedents, and opposites. So, too, Cic. Topic. c. 4 and 12, and De Orat. ii. 39. . . . . But the omission of *ex antecedentibus* is supported by two other passages of Quintilian, v.

alleged fact, in the time at which it took place, or in the time that followed it; nor can anything be proved but from some other thing, which must either be greater or less than it, or equal to it. 6. As for *arguments*, they arise either from *general questions*, which may be considered in themselves, apart from from any connexion with things or persons, or from *the cause itself*, when anything is found in it not derived from common reasoning,* but peculiar to that point on which the decision is to be pronounced. Of all conclusions, moreover, some are *necessary*, some *probable*, some *not impossible*.

7. Of all proofs, too, there are four forms. Because one thing is, another is not: as, *It is day, therefore it is not night;* because there is one thing, there is also another: as, *The sun is above the earth, therefore it is day;* because one thing is not, another is: as, *It is not night, therefore it is day;* because one thing is not, another is not: as, *He is not a rational being, therefore he is not a man.* Having premised these general remarks, I shall proceed to particulars.

CHAPTER IX.

Difference of signs, indications, or circumstantial evidence, from proofs, § 1, 2. Of conclusive signs or indications, 3—7. Inconclusive signs are of weight when supported by others, 8—11. Of mere appearances, 12—14. Of prognostics, 15, 16.

1. All artificial proof, then, depends on *indications*, or *arguments*, or *examples*. I am aware that *indications* are thought by many† a species of arguments; and I had, in consequence, two motives for distinguishing them; the *first*, that indications generally, almost always, belong to inartificial proofs; for *a blood-stained garment, a shriek, a livid spot*, and similar particulars, are circumstances of the same nature as *writings, reports*, and *depositions;* they are not invented by the orator, but communicated to him with the cause itself; 2. the *second*,

10, 2, v. 14, 1, 25; and he appears to make it sufficiently evident that he intended to include *antecedentia* in *consequentia*, (see v. 10, 76,) as Regius himself indeed thought likely to be the case. *Spalding.*

* Not from reasoning common to all causes. *Capperonier.*

† Cicero Topic. c. 4, 12.

that neither can *indications*, if they are *certain*, be arguments, because, where there are certain indications, there is no question, and there can be no room for argument except upon a controverted point; nor, if they are *uncertain*, can they be arguments, but have themselves need of arguments.

3. All artificial proofs, then, as I say,* are distinguished, first of all, into two kinds, one in which the conclusion is *necessary*, the other in which it is not *necessary*. The former are those which cannot be otherwise, and which the Greeks call τεκμήρια, or ἄλυτα σημεῖα; these scarcely seem to me to come under the rules of art; for when there is an irrefutable indication, there can be no ground for dispute. 4. This happens whenever a thing must be, or must have been; or cannot be, or cannot have been; and this being stated in a cause, there can be no contention about the point. 5. This kind of proofs is considered with reference to all times, past, present, and future; for *that she who has had a child must have lain with a man* regards the past; *that there must be waves when a strong wind has fallen on the sea*, concerns the present; and *that he whose heart is wounded must die*, relates to the future.† In like manner it is impossible *that there can be harvest where there has been no sowing; that a person can be at Rome when he is at Athens;* or *that he who is without a scar can have been wounded with a sword.* 6 Some have the same force when reversed; as, *a man who breathes must be alive*, and *a man who is alive must breathe;* but others are not reversible; for it does not follow that, because *he who walks must move*, therefore *he who moves must walk.* 7. It is consequently possible that *she who has not had a child may have had connexion with a man;* that *where there are waves, there may yet be no wind on the sea; that the heart of him who dies may not have been wounded;* and, in like manner, that *there may have been sowing, when there was no harvest;* that *he who was not at Athens, may not have been at Rome;* and that *he who is marked with a scar may not have been wounded with a sword.*

* Sect. 2.

† The reader may think it a whimsical observation, but I cannot help thinking that the *three examples* here brought are strong evidences, or, to speak in our author's terms, presumptions [*signa*, "indications"] of the *antiquity* of the gospel history; unless we suppose, contrary to all credibility, that Quintilian stumbled upon them by chance. We here see the facts of our Saviour's birth, his miracles, and his resurrection, *attacked* in the strongest manner. *Guthrie.*

8. The other sort of indications are those from which there is no absolutely *necessary* conclusion, and which the Greeks call *εἰκότα*: these, though they are not sufficient of themselves to remove all doubt, yet, when they are combined with others, are of great weight.

9. That from which something else is inferred, as from *blood* is suspected *murder*, the Greeks term, as I said, *σημεῖον*, that is, *signum*, "a sign;" though some of our writers have used the word *indicium*, "an indication," and others *vestigium*, "a trace." But as the blood that stained a garment may have proceeded from a sacrifice or may have flowed from the nose, it does not necessarily follow that he who has a blood-stained garment has committed a murder. 10. Yet, though it is not a sufficient proof of itself, still, when combined with other circumstances, it cannot but be regarded as evidence; *as if the man with the blood-stained garment was the enemy of him who was killed; if he had previously threatened his life; if he was in the same place with him;* to which circumstances when some presumptive proof is added, it makes what was suspected appear certain. 11. Among such indications, however, there are some which either side may interpret in its own way, as *livid spots*, and *swelling of the body;* for they may seem to be the effects either of poison or intemperance, and *a wound in the breast*, from which people may argue that he in whom it is found has perished either by his own hand or by that of another. The strength of such indications is proportioned to the support which they receive from other circumstances.

12. Of indications, which are presumptions indeed, but from which no necessary conclusion follows, Hermagoras thinks the following an example: *Atalanta is not a virgin, because she strolls through the woods with young men.* If we admit such a circumstance as a presumption, I fear that we shall make everything that has any reference to a fact a presumption. Such circumstances are however treated by rhetoricians as presumptive proofs. 13. Nor do the Areopagites, when they condemned a boy to death for picking out the eyes of quails,* appear to have had any other thought than that such an act was

* This story I have not seen mentioned elsewhere. The boy might have bred the quails for the game called *ortygocopia*, which was much practised among the Greeks, and concerning which Gesner refers to Pollux Onomast. vii. 136, ix. 108. *Spalding.*

the indication of a cruel disposition, likely to do mischief to many if he should be allowed to reach maturity. Hence also the popularity of Spurius Mælius and Marcus Manlius was regarded as an indication that they were aspiring to sovereignty. 14. But I am afraid that this mode of reasoning would carry us too far; for if a woman's bathing with men is a sign that she is an adulteress, it will be a sign of the same nature if she takes her meals with young men, or if she enjoys the intimate friendship of any man; as a person might perhaps call a depilated skin, a sauntering walk, and a delicate dress, signs of effeminacy and unmanliness, if he thinks that they proceed from corrupt morals, as blood flows from a wound; a sign being properly that which, proceeding from a matter about which there is a question, falls under our own observation. 15. Those appearances, also, which, as they are constantly noticed, are vulgarly called signs, such as prognostics of the weather, *The golden moon is red from the approach of wind*, and *The mischievous crow calls for rain with a loud voice*,* may, if they have their causes from the state of the atmosphere, receive that appellation; 16. for if the moon is red from the influence of wind, its redness is a sign of wind; and if, as the same poet infers, a condensed or rarefied atmosphere gives rise to a chattering of birds,† we shall consider such chattering also a sign. We may likewise observe that small things are sometimes signs of great, as this very chattering of the crow; that greater things are signs of less, nobody wonders.

* Virg. Georg. i. 431, 388.
† Virg. Georg. i. 419.

CHAPTER X.

Of the different names given to arguments among the Greeks and Latins, § 1—8. Various significations of the word argument, 9—11. In every cause there must be something that does not require proof, 12—14. Of credibilities, 15—19. Of sources from which arguments are drawn, 20—22. From the character of individuals, 23—31. From circumstances, as motives, place, time, manner, 32—48. Opportunities and means, 49—52. Arguments from definition, 53—61. Remarks on Cicero's method; argument and definition assisted by division, 62—70. Arguments from commencement, increase, and event, 71, 72. From dissimilitude, opposition, consequentiality, 73—79. From causes and effects, 80—85. From comparison, 86—89. Too many subdivisions under this head, 90—94. Arguments from supposition, 95—99. Precepts not to be followed too superstitiously; examples, 100—108. An orator must take care what he proposes to be proved; an example, 109—118. Utility of rules, 119—121. Necessity and advantages of study and practice, 122—125.

1. I NOW proceed to speak of *arguments;* for under this term we include all that the Greeks call *ἐνθυμήματα*, *ἐπιχειρήματα*, and *ἀποδείξεις*, of which, though there is some difference in the names, yet the meaning is nearly the same. The word *enthymema*, (which we translate, indeed, as we cannot render it otherwise, by *commentum* or *commentatio*, but we had better use the Greek word itself,) has three meanings; one, which signifies everything that is conceived in the mind; (but with this meaning we have now no concern;) another, which signifies a proposition with a reason; 2. a third, which signifies a conclusion of an argument, deduced from consequents or opposites;* although with regard to this sense authors differ; for some call a conclusion from consequents an *epicheirema;* but more will be found of opinion that a conclusion from opposites† only should be called an *enthymeme;* and hence Cornificius gives it the appellation *contrarium.* 3. Some have called it a *rhetorical syllogism*, others an *imperfect syllogism*, because it is not comprised in distinct parts, or in the same number of parts, as the regular syllogism, such exactness, indeed, not being required in the orator.

4. Valgius‡ calls the epicheirema *aggressio*, "attempt."

* See c. 8, sect. 5.
† Compare v. 14, 2; viii. 5, 9; Cicero Topic. c. 13.
‡ See iii. 1, 18

Celsus thinks that it is not our management of the subject,* but the subject itself which we attempt, (that is, the argument by which we propose to prove anything, and which, though not yet set forth in words, is fully conceived in the mind,) that is called an *epicheirema*. 5. Others are of opinion that it is not an intended or imperfect proof, but a complete one, proceeding even to the last species,† that ought to receive this appellation; and hence its proper acceptation, and that which is most in use, is that in which it is understood to be a certain comprehension of a thought which consists at least of three parts.‡ 6. Some have called an epicheirema a *reason*.§ Cicero,‖ more happily, a *reasoning;* although he seems to have taken that name rather from the syllogism than from anything else; for he calls the *status syllogisticus* ¶ a "ratiocinatory state," and gives examples from the philosophers; and, as there is some affinity between the syllogism and the epicheirema, he may be thought to have adopted that term judiciously.

7. As to the *ἀπόδειξις*, it is an *evident proof;* and hence the term *γραμμικαὶ ἀποδείξεις*, "linear demonstrations," among geometers. Cæcilius thinks that it differs from the epicheirema only in the manner of its conclusion, and that an *ἀπόδειξις* is an imperfect epicheirema, for the same reason for which we said an enthymeme differs from a syllogism; for an enthymeme is a part of a syllogism. Some think that the apodeixis is included in the epicheirema, and is the part of it which contains the proof. 8. But authors, however different in other respects, concur in defining both of them so far similarly, as to say that the reasoning in them is from that which is certain in order to give confirmation to that which is doubtful; a quality which is common to all arguments, for what is certain is never deduced from what is uncertain. To all these

* *Nostram administrationem.*] Capperonier aptly refers us to ii. 18, 5 whence we understand that by *administratio* is to be understood *πράξις* as opposed to *θεωρία*. *Spalding.*

† *Ultimam speciem.*] Compare sect. 56; vii. 1, 23. Porphyry says Spalding, called it *τὸ εἰδικώτατον εἶδος*. The more common appellation, observes Capperonier, is *species infima*.

‡ The major, minor, and conclusion. See Cic. De Inv. i. 34, and c. 14 of this book, sect. 6—9, where it is shown how the Epicheirema is made to consist of five parts.

§ Who gave it this name, we cannot now discover *Spalding.*

‖ De Inv. i. 31, 34.

¶ See iii. 6, 15.

forms of argument the Greeks give the general name of *πίστεις*, which we might by a literal interpretation render *fides*, "faith;" but we shall make the sense of it clearer if we call it *proof*.

9. But the word *argument* has itself also several significations; for the subjects of plays,* composed for acting on the stage, are called *arguments;* Asconius Pedianus, in explaining the topics of the orations of Cicero, says *The argument is this:* Cicero† himself, in writing to Brutus, says, "Fearing lest I should bring from thence any evil upon my Cato, though the *argument* was far from similar," etc.; whence it appears that every subject for writing is so called. 10. Nor is this wonderful, when the word is common even among artisans;‡ Virgil§ also has *argumentum ingens*, "a great argument;" and a work of any considerable number of heads is vulgarly called *argumentosum*, "argumentative." But we have now to speak of that sense of the word argument, which includes *proof*, *indication*, *credibility*, *aggression*, which are all used as names for the same thing, but, in my opinion, with too little distinction. 11. For *proof* and *credibility* are established not only by arguments dependent on reasoning, but by such as are called inartificial. As to *signs*, which Celsus‖ calls *indications*, I have already distinguished¶ them from arguments.

Since, then, an *argument* is *a process of reasoning affording a proof, by which one thing is gathered from another, and which establishes what is doubtful by reference to what is certain*, there must assuredly be something in a cause that does not require proof; for unless there be something which is true, or which appears true, and from which support may be gained for what is doubtful, there will be no ground on which we can prove anything. 12. As certainties, accordingly, we have, in the first place, what is perceived by the senses, as what we see, what we hear, as *signs* or *indications;* next, what is admitted by the general consent of mankind, as, *that there are gods*, and *that*

* Comp. ii. 4, 2.

† See note on ii. 20, 10.

‡ Artificers not only call the material on which they work *argumentum*, but also the elaboration and construction of their material. Thus Cicero in Verr. iv. 56 says *ex ebore diligentissimè perfecta* argumenta *in valvis erant*, that is, *simulacra descripta*. Turnebus.

§ Æn. vii. 791.

‖ *Ille.*] I have no doubt, says Spalding, that it is Celsus who is meant.

¶ See c. 9, sect. 2.

respect is to be paid to parents; 13. also, what is established by the laws, or what is passed into general usage, with the concurrence, if not of the whole world, at least of that community or people among whom we have to plead, as indeed, in what is called legal right, most points are settled, not by positive laws, but by common custom; and, lastly, whatever is agreed between the two parties, whatever is proved, or whatever our adversary does not dispute, 14. For thus will arise an argument, *As the world is governed by a providence,* the state ought to be governed by some ruling power;* showing that if it is acknowledged that the world is governed by a providence, the state ought likewise to be governed. 15. But to him who would handle arguments properly, the nature and quality of all things whatever ought to be known, as well as their general effects; for it is by such knowledge that arguments called εἰκότα, "probable," are established. 16. Now of *probability* there are three degrees; one, which rests on very strong grounds, because that to which it is applied generally happens, as *that children are loved by their parents;* a second, somewhat more inclined to uncertainty, as *that he who is in good health to-day will live till to-morrow;* a third, which is only not repugnant to credibility, as *that a theft committed in a house was committed by one of the household.* 17. Hence it is that Aristotle, in his second book on the Art of Rhetoric,† has so carefully considered what generally attends on various things and persons, and what things or what persons nature has rendered friendly or unfriendly to other things or other persons; as, *what accompanies riches*, or *ambition*, or *superstition; what the good approve; what the bad pursue; what soldiers or husbandmen desire;* and *by what means things are severally shunned or sought.* 18. But this subject I do not intend to pursue; for it is not only long, but even impracticable, or rather infinite; and it is plain, moreover, to the common understanding of all. If any one shall desire, however, to be enlightened upon it, I have shown him from whom‡ he may seek instruction. 19. But all probability, on which the far greater part of reasoning depends, flows from sources of this nature, *whether it be credible that a father was killed by his son;* that *a father committed*

* Comp. c. 7, sect. 35.
† In the first seventeen chapters.
‡ Aristotle.

incest with his daughter; and, again, *whether poisoning be credible in a step-mother,* or *adultery in a man of licentious life,* also, *whether it be credible that a crime was committed in the sight of the whole world,* or *that false testimony was given for a small bribe;* because each of these crimes proceeds from a peculiar cast, as it were, of character; I mean generally, not always, else all reasoning about them would be absolute certainty, and not mere probable argument.

20. Let us now examine the *places of arguments;* although, indeed, the topics of which I have previously spoken* are regarded as *places of argument* by some rhetoricians. By *places,* let me observe, I mean, not *common places,* in the sense in which the word is generally understood, in reference to *luxury, adultery,* or such subjects; but *the seats of arguments, in which they lie concealed, and from which they must be drawn forth.* 21. For as all kinds of fruits are not produced in all countries, and as you will be unable to find a bird or a beast, if you are ignorant where it is usually produced or makes its abode, and as, among the several kinds of fishes, some delight in a smooth and others in a rocky bottom of the water, while particular sorts are confined to particular regions or coasts, and you could not attract the ellops ‡ or the scarus § to our shores, so every kind of argument is not to be got from every place, and is consequently not everywhere to be sought; 22. otherwise there would be much wandering about, and, after enduring the utmost labour, we should not be able to find, unless by chance, that for which we should seek without method. But if we ascertain where particular arguments offer themselves, we shall, when we come to the place where they lie, easily discern what is in it.

23. First of all, then, arguments are to be drawn from *persons;* there being, as I said,‖ a general division of all arguments into two kinds, those which concern *things,* and those which concern *persons;* and the accidents of things being *cause, time, place, opportunity, instruments, manner,* and the

* In the preceding chapter. *Spalding.*

† II. 4, 22; v. 12, 16; 13, 57.

‡ A fish that was thought a delicacy by the ancients. Some have supposed it to be the same as the *acipenser,* or sturgeon; Pliny pronounced them different, H. N. ix. 17, 27; xxxii. 11, 54.

§ This the Romans also thought a delicacy. See Plin. ll. cc. It is mentioned by Horace, Ovid, Martial, and Petronius.

‖ C. 8, sect. 4.

like. As to *persons*, I do not undertake to treat of every particular concerning them, as most rhetoricians have done, but only of those topics from which arguments may be drawn. 24. These, then, are, *birth*, for people are mostly thought similar in character to their fathers and forefathers, and sometimes derive from their origin motives for living an honourable or dishonourable life; *nation*, for every nation has its peculiar manners, and the same thing will not be alike probable in regard to a Barbarian, a Roman, and a Greek; 25. *country*, for, in like manner, the laws, institutions, and opinions of states have their peculiarities; *sex*, for you would more readily believe a charge of robbery with regard to a man, and poisoning with regard to a woman; *age*, for different modes of action belong to different periods of life; *education* and *discipline*, for it makes a difference by whom, and in what manner a person has been brought up; 26. *bodily constitution*, for beauty is often drawn into an argument for libertinism, and strength for insolence, and the contrary qualities for contrary conduct; *fortune*, for the same charge is not equally credible in reference to a rich and a poor man, in reference to one who is surrounded with relations, friends, and clients, and one who is destitute of all such support; *condition*, for it makes a great difference whether a man is illustrious or obscure, a magistrate or a private person, a father or a son, a citizen or a foreigner, free or a slave, married or a bachelor, the father of children or childless; 27. *natural disposition*, for avarice, passionateness, sensibility, cruelty, austerity, and other similar affections of the mind, frequently either cause credit to be given to an accusation or to be withheld from it; *manner* of living, for it is often a matter of inquiry whether a person is luxurious, or parsimonious, or mean; *occupations*, for a countryman, a lawyer, a trader, a soldier, a mariner, a physician, act in very different ways. 28. We must consider also *what a person affects*, whether he would wish to appear rich or eloquent, just or powerful. *Previous doings and sayings*, too, are to be taken into account; for the present is commonly estimated from the past. To these some add *commotion of the mind*, which they wish to be understood in the sense of a temporary excitement of the feelings, as anger, or fear; 29. and *designs*, which respect the present, past, and future, but these, though they are accidents of persons, should yet be

referred, I think, as considered in themselves, to that species of argument which we derive from motives; as also certain *dispositions of mind*, in regard to which it is considered whether a particular person is a *friend* or an *enemy* of another person. 30. They specify also the *name* among the topics of argument in regard to a person; and the name must certainly be termed an accident of a person, but it is rarely the foundation of any reasoning, unless when it has been given for some cause, as *Sapiens*, *Magnus*, *Plenus*,* or has suggested some thought to the bearer of it, as Lentulus's† name led him to think of joining the conspiracy of Catiline, because dominion was said to be promised by the Sibylline books and the predictions of the soothsayers *to three Cornelii*, and he believed himself, as he was a Cornelius, to be the third after Sylla and Cinna. 31. As to the conceit of Euripides,‡ where the brother of Polynices reflects on his name, as an argument of his disposition, it is extremely poor. For jesting, however, occasion is frequently furnished by a name,§ and Cicero has more than once indulged in it in his pleadings against Verres. Such, and of such a nature, are the common subjects of argument with regard to persons. All I cannot enumerate, either under this head or under others, but content myself with showing the way to those who may inquire farther.

32. I now come to *things*, among which *actions* are most closely connected with persons, and must therefore be first considered. In regard, then, to everything that is done, the question is, either *why*, or *where*, or *when*, or *in what manner*, or *by what means*, it was done, 33. Arguments are consequently derived from *the motives for actions done* or *to be done;* the *matter* of which motives, which some of the Greek writers call ὕλη and others δύναμις, they divide into two kinds, subdividing each kind into four species; for the motive for any action is generally connected with the *acquisition*, the *augmentation*, the *pre-*

* I retain this reading, on the authority of all good copies, but no reason for the name has hitherto been given, nor has the name itself been found in any record or monument of antiquity. Gallæus and Obrecht conjecture *Plancus*, Gesner *Planus* from the Greek πλάνος. Burmann thinks that *Plenus* may have been a surname of Crassus in the sense of *Dives*. Spalding.

† See Sallust, Cat. 47; Orat. in Catil. iii. 4.

‡ Phœniss. 639, 640.

§ See vi. 3, 53.

servation, or the *enjoyment*, of some *good*, or the *avoidance*, *diminution*, *endurance*, of some *evil*, or *delivery* from it; considerations which have great weight in all our deliberations. 34. But right actions have such motives; wrong ones, on the contrary, proceed from false notions; for the origin of them is from the objects which men *fancy* to be good or evil; and hence arise errors of conduct, and corrupt passions, among which may be reckoned *anger*, *envy*, *hatred*, *avarice*, *presumption*,* *ambition*, *audacity*, *timidity*, and other feelings of a similar nature. Sometimes fortuitous circumstances are added, as *drunkenness*, or *mistake*, which sometimes serve to excuse, and sometimes to give weight to a charge, as *when a man is said to have killed one person while he was lying in wait for another.* 35. Motives, moreover, are constantly investigated not only to establish, but to repel, accusations, as when an accused person maintains that he acted rightly, that is, from a laudable motive; on which point I have spoken more fully in the third book.† 36. Questions of definition, too, sometimes depend upon motives, as *whether he is a tyrannicide who killed a tyrant by whom he had been caught in adultery;* and *whether he is guilty of sacrilege who took down arms suspended in a temple to drive enemies out of his city.* 37. Arguments are also drawn from *places;* for it often concerns the proof of a fact, *whether the scene of it was mountainous or level, maritime or inland, planted or uncultivated, frequented or lonely, near or distant, suitable or unsuitable for the alleged purpose;* considerations which Cicero treats with very great effect in his defence of Milo. 38. These and similar points most commonly relate to questions of fact, but sometimes also to questions of law, as *whether a place be private or public, sacred or profane, our own or belonging to another*, as we consider in regard to a person whether he be a *magistrate*, or a *father*, or a *foreigner.* 39. For hence questions arise; as, *You have taken the money of a private individual, but, as you took it from a temple, your crime is not mere theft, but sacrilege.—You have killed an adulterer, an act which the law allows, but as you committed it in a brothel, it is murder.—You have done violence, but as you did it to a magistrate, an action for treason may be brought*

* *Spes.*] In a bad sense; hope of obtaining that to which we have no right.

† C. 11, sect. 4—9.

against you. 40. Or, on the other hand, a person may argue, *I had a right to act in such a way, for I was a father*, or *I was a magistrate.* But it is to be observed that arguments derived from *place* afford * matter for dispute as to questions of fact as well as regarding points of law. *Place*, too, frequently affects the *quality* of an action; for the same act is not allowable or becoming in all places alike; and it is likewise of consequence before what people a question is tried; for every people has its peculiar customs and laws. 41. Place has also influence in commendation or disparagement; as Ajax says in Ovid,† *Agimus ante rates causam, et mecum confertur Ulysses? "Do we plead our cause before the ships, and is Ulysses compared with me?"* To Milo, too, it was made a subject of reproach, among other things, *that Clodius had been killed by him amidst the monuments of his ancestors.* 42. *Place* has influence, moreover, in *deliberative* oratory, as well as *time*, some remarks on which I shall subjoin.

Of *time*, as I have already observed in another place,‡ there are two acceptations, since it is viewed either *generally* or *specially.* *Generally*, as when we say, *now, formerly, in the time of Alexander, during the struggle at the siege of Troy;* or whatever relates to the *present*, *past*, or *future.* *Specially*, when we speak of received divisions of time, as *in the summer, in the winter, by day, by night*, or of *accidental* occurrences at any particular period, as *during a pestilence, in a war, at a banquet.* 43. Some of our Latin authors have thought that sufficient distinction was made if they called time *in general* merely *time*, and *special* portions of it *times.* To say nothing more on that point, regard to time in both senses is to be had both in deliberative and epideictic, but most frequently in judicial, pleading. 44. For it gives rise to questions of law,§ and determines the quality of actions, and has great influence

* *Sed circa facti controversiam argumenta præstant, circa* juris *lites materiam quæstionum.*] The reader will observe that *præstant*, as Spalding remarks, refers to *hæc quidem ac similia* in sect. 38, *argumenta* being in the accusative case. "Il faut donc remarquer que les argumens tirés du *lieu*, en même temps qu' ils servent à établir le fait, sont la matière des questions de droit." *Gedoyn.*

† Metam. xiii. 5.

‡ III. 6, 25.

§ For instance, if a man surprises an adulterer, who escapes for the time, but is killed by him on a subsequent occasion. *Turnebus.*

in questions of fact, since it sometimes offers irrefragable proofs, as if a person should be said (as I supposed above *) to have signed a deed when he died before the date of it, or to have done something wrong when he was quite an infant or even not born. 45. Besides it is to be observed that arguments of all kinds are readily drawn either from circumstances that *preceded* the fact in question, or occurred *at the same time* with it, or *happened after* it: From *previous* circumstances, as, *You threatened the deceased with death, you went out at night, you went before him on the road;* and motives for deeds, too, relate to time past: 46. From *contemporaneous* circumstances, which some have distinguished more nicely than was necessary, dividing them into that which is *combined* with an act, as, *A noise was heard*, and that which is *attached* to an act, as *A cry was raised:* From *subsequent* circumstances, as, *You concealed yourself; you fled; discolorations and swellings appeared on the body.* The defendant also will direct his thoughts to the same divisions of time in order to discredit the charge that is brought against him.

47. In these considerations is included all that concerns deeds and words; but under two aspects; for some things are done because something else will follow; and others because something else was done before; as when it is alleged against a man accused of trafficking in women, that he bought a beautiful woman who had been found guilty of adultery;† or against a rake accused of parricide that he had said to his father, *You shall not reproach me any more;* for the former is not a trafficker in women because he bought the woman, but he bought her because he was a trafficker in women; and the latter did not kill his father because he uttered those words, but uttered the words because he meditated killing his father.

48. As to fortuitous occurrences, which also afford ground for arguments, they doubtless belong to subsequent time, but are generally distinguished by some peculiarity in the persons whom they concern; as if I should say, *Scipio was a better general than Hannibal; he defeated Hannibal.—He was a good pilot; he never suffered shipwreck.—He was a good husband-*

* C. 5, sect. 2.

† I hesitate at this example, says Spalding, as there is nothing bearing on any such case in the Roman law; but I must suppose it, he adds, to have been a theme for declamation in the schools. No other commentator makes any remark about it.

man; he raised large crops. Or, in reference to bad qualities, *He was extravagant; he exhausted his patrimony.—He lived disgracefully; he was disliked by all.*

49. We must also, especially in questions of fact, regard the *means* of which a party was possessed; for probability inclines us to suppose that a smaller number was killed by a larger, a weaker by a stronger, people asleep by people awake, the unsuspecting by the well prepared. Opposite states of things lead to opposite conclusions. 50. Such points we regard in deliberative speeches; and in judicial pleadings we keep them in view with reference to two considerations, *whether a person had the inclination, and whether he had the power;* for hope depending on power, often gives rise to inclination. Hence that conjecture in Cicero:* "Clodius lay in wait for Milo, not Milo for Clodius; Clodius was attended with a body of stout slaves, Milo with a party of women; Clodius was travelling on horseback, Milo in a carriage; Clodius was unincumbered, Milo enveloped in a cloak." 51. Under means, also, we may include *instruments*, for they form part of appliances and resources; and presumptive proofs, too, sometimes arise from instruments, as when *a sharp weapon is found sticking in a dead body.* 52. To all this is to be added *manner*, which the Greeks call τρόπος, in reference to which the question is, *How a thing was done?* And it has relation both to the quality of an act and to the interpretation of writings,† as if we should deny *that it is lawful to kill an adulterer with poison*, and say *that he ought to have been killed with a sword.*‡ It may concern questions of fact also; as if I should say that a thing *was done with a good intention, and therefore openly;* or *with a bad intention, and therefore insidiously, in the night, and in a lonely place.*

53. But in regard to every matter, about the quality or nature of which there is any question, and which we contemplate independently of persons and all else that constitutes a cause, three points are doubtless to be considered, *whether it is, what it is, and of what nature it is.* But as certain topics of argument are common to all these, the three cannot be

* Pro Mil. c. 10.

† See sect. 40 of this chapter, and iii. 5, 4; iii. 6, 55, 66.

‡ See sect. 88, and iii. 6, 27.

divided, and must accordingly be introduced under the heads under which they respectively happen to fall.

54. Arguments, then, are drawn from *definition*, (*ex finitione* seu *fine*, for both terms are in use,) of which there are two modes; for we either inquire simply *whether such a thing is a virtue*, or with a definition previously given, *what virtue is*. Such definition we either express in a general way, as, *Rhetoric is the art of speaking well*, or with an enumeration of particulars, as *Rhetoric is the art of rightly conceiving, arranging, and expressing our thoughts, with an unfailing memory and with propriety of action*. 55. We also define a thing either by its nature, as in the preceding example, or by reference to etymology, as when we derive the sense of *assiduus* from *æs* and *do*, that of *locuples* from *copia locorum*, or that of *pecuniosus* from *copia pecorum*.

To definitions seem especially to belong *genus*, *species*, *difference*, *property*. 56. From all these arguments are deduced. *Genus* can do little to establish species, but very much to set it aside; what is a tree, therefore, is not necessarily a plane tree, but what is not a tree, is certainly not a plane tree; nor can that which is not a virtue be justice; and therefore we must proceed from the genus to the *ultimate* species;* as to say, *Man is an animal*, is not enough, for *animal* is the genus; and to say that he is *mortal*, though it expresses a species, is but a definition common to other animals; but if we say that he is *rational*, nothing will be wanting to signify what we wish. 57. On the contrary, *species* affords a strong proof of *genus*, but has little power to disprove it; for that which is justice is certainly a virtue, while that which is not justice may be a virtue, if it is fortitude, prudence, or temperance. A *genus*, therefore, will never be disproved by proving a *species*, unless all the species, which are included under that genus, be set aside, as *That which is neither mortal nor immortal is not an animal*.

58. To genus and species writers add *properties* and *differences*. By properties a definition is established; by differences it is overthrown. A *property* is that which either belongs only to one object, as *speech* and *laughter* to man, or belongs to it, but not to it alone, as *heat* is a property of fire. There may be also many properties of the same thing, as fire, for instance, *shines* as well as *heats*. Consequently, whatever property is omitted

* See sect. 5. Cicero Topic. c. 6.

in a definition, will weaken it; but it is not every property introduced in it that will establish it. 59. It is very often a question, too, *what is a property* of something under consideration; for instance, if it be asserted, on the etymology of the word, "It constitutes a man a *tyrannicide* to *kill a tyrant*," we may deny it, for if an executioner should kill a tyrant delivered to him to be put to death, he would not be called a tyrannicide, nor would a man be called so that had killed a tyrant unawares or unwillingly. 60. But that which is not a *peculiar property* will be a *difference;* as *it is one thing to be a slave and another to serve;* whence there is this distinction with regard to *addicti*, or insolvent debtors sentenced to serve their creditors: *He who is a slave, if he is set free, becomes a freedman; but this is not the case with an* addictus; and there are other points of difference between them, of which I shall speak in another place.* 61. They call that also a difference, by which, when the *genus* is distinguished into *species*, a species itself is particularized; as, *Animal* is the genus; *mortal*, a species, *terrestrial* or *two-footed*, a difference; for we have not yet come to property, though the animal is distinguished from the *aquatic* or the *four-footed;* but such distinction belongs, not so much to argument, as to exact expression of definition. 62. Cicero separates *genus* and *species*, which latter he calls *form*, from definition, and puts them under *relation;* as, for example, *if a person to whom all the silver of another person has been bequeathed, should claim also the coined silver*, he would found his claim upon *genus;* but *if a person, when a legacy has been left to a woman who should have been a materfamilias to her husband, denies that it ought to be paid to her who never came into her husband's power*, he reasons from *species*, because there are two sorts of marriages.†

63. Cicero‡ also shows that definition is assisted by *division*, which he makes distinct from *partition*, partition being the distribution of a whole into its parts, division that of a genus

* VII. 3, 26; iii. 6, 25.

† The two sorts of marriages were *per coemptionem*, when the woman was delivered into the hand and power of the man, and was then called *materfamilias;* the other was *citra coemptionem*, when the connexion was formed by cohabitation. *Turnebus.* See Cic. pro Flacc. 34. Adam's Rom. Ant. p. 426, 8vo. ed. "A legal marriage was either *cum conventione uxoris in manum viri*, or it was without this *conventio*." Smith's Dict. of Gr. and Rom. Ant. art. Marriage, Roman.

‡ Topic. c. 5, 7.

into its forms or species. The number of parts, he says, is uncertain ;* for instance, *the parts of which a state consists ;* but that of forms, certain, as *the number of forms of government*, which we understand to be three, that in which the power is in the hands of the people, that in which it is in those of a few, and that in which it is in those of one. 64. He, indeed, does not use these examples, because, writing to Trebatius,† he preferred taking his instances from law. I have given such, as I think, plainer.

Properties have reference also to questions dependent on conjecture ;‡ for, as it is the property of a good man to act rightly, and of a passionate man to be violent in his language, it is supposed that he who acts rightly is a good man, and that he who is violent in his language is a passionate one ; and such as act or speak otherwise are supposed to be of opposite characters ; for when certain qualities are *not* in certain persons, the inference, though from opposite premises, is of a similar nature.§

65. *Division*, in a similar way, serves to prove and to refute. For proof it is sometimes sufficient to establish one half ; as in this example : *A man, to be a citizen, must either have been born a citizen, or have been made one ;* but in refuting you must overthrow both particulars, and show that *he was neither born nor made a citizen.* 66. This mode of reasoning is manifold ; and there is a form of argument *by successive removals*,|| by which a whole allegation is sometimes proved to be false, and sometimes a portion of it, which is left *after successive removals*, is shown to be true. A whole allegation is proved to be false in this manner : *You say that you lent this money : Either then you had it of your own, or you received it from some one else, or you found it, or you stole it : If you neither had it of your own, nor received it from any one, nor* etc., *you did*

* Of forms there is always a certain number, and to omit any one of them in a definition is a fault ; but the number of parts is frequently infinite. *Turnebus.*

† III. 11, 18.

‡ That is, to the *status* termed *conjecturalis* by the rhetoricians; commonly called *quæstio de facto.* Capperonier.

§ For example, as it is the part of a merciful man not to do wanton injury, I shall infer, if a man commits wanton injury, that he is not merciful. *Turnebus.*

|| *Ex remotione.*] Cicero, Inv. i 29, calls it *enumeration*, several particulars being enumerated, and all overthrown except one, which is then considered as proved.

not lend it. 67. What is left is established as true in this way: *This slave, whom you claim as your own, was either born in your house, or bought by you, or given to you, or left to you by will,* or *captured by you from the enemy,—or he belongs to another person:* when it is shown that the suppositions are all unfounded, except the last, it will be clear that the slave belongs to another. This kind of argumentation is dangerous, and must be conducted with great wariness, for if we omit one particular in the enumeration, our whole edifice will fall to the ground, to the amusement of our audience. 68. That mode is safer which Cicero uses in his speech for Cæcina,* when he asks, *If this is not the point in question, what is it?* for thus all other points are set aside at once. That also is safer, in which two contrary propositions are advanced, of which it is sufficient for our purpose to establish either; as in this example from Cicero:† *There is certainly no one so unfavourable to Cluentius as not to grant me one thing: If it is certain that those judges were bribed, they must have been bribed either by Habitus or by Oppianicus; if I show that they were not bribed by Habitus, I prove that they were bribed by Oppianicus; if I make it appear that they were bribed by Oppianicus, I clear Habitus from suspicion.* 69. Or liberty may be granted to our adversary to choose one of two propositions, of which one must necessarily be true, and, whichsoever he chooses, it may be proved to be adverse to his cause. This is a mode which Cicero adopts in pleading for Oppius:‡ *Whether was it when he was aiming at Cotta, or when he was attempting to kill himself, that the weapon was snatched from his hand?* And in that for Varenus:§ *The option is granted you, whether you would prefer to say that Varenus took that road by chance, or at the instigation and persuasion of the other;* and he then shows that either supposition is equally adverse to the accuser. 70. Sometimes two propositions are stated of such a nature that from either, if adopted, the same consequence follows: as

* C. 13.

† Pro Cluent. c. 23.

‡ Marcus Aurelius Cotta, proconsul of Bithynia, had dismissed his quæstor Publius Oppius on suspicion of embezzling the public money and plotting against his life, of which he was afterwards accused, and defended by Cicero. See Dion. Cass. b. xxxvi. p. Reim. 100. The only fragment of Cicero's speech that is extant is the one in the text. *Spalding.*

§ See iv. 2, 26; and the fragments in Ernesti, p. 1040.

in the common adage, *We must philosophize, though we must not philosophize;** or in the still more common question, *To what purpose is a figure,† if the subject is intelligible? to what purpose if it is not intelligible?* and in this saying, *He who can endure pain, will tell lies under torture; he who cannot endure pain will tell lies.*

71. As there are three parts of time, so the order of things is comprised in three stages of progress; for everything has a *beginning*, an *increase*, and a *completion;* as first, for instance, there is a quarrel, then one man's blood is shed, then that of several. Here then is an origin for arguments supporting one another; for the *end* may be inferred from the *beginning;* as in the common saying, *I cannot expect a toga prætexta when I see the commencement of the web black;* or the *beginning* may be argued from the *end;* as *the resignation of the dictatorship* may be made an argument *that Sylla did not take arms with the object of making himself a tyrant.* 72. From the *increase* of a thing, in like manner, arguments may be drawn with regard both to its *beginning* and its *end;* and that not only in conjectures as to matters of fact, but in the consideration of points of law: as, *Is the end referable to the beginning?* that is, *Ought the blood shed to be imputed to him with whom the quarrel began?*

73. Arguments are also drawn from *similarities: If continence be a virtue, abstinence is also a virtue; If a guardian ought to give security, so likewise should an agent.* This argument is of the nature of that which the Greeks call ἐπαγωγή, Cicero‡ *induction.* From *dissimilarities: If joy is a good, pleasure is not therefore necessarily a good: What is lawful in regard to a woman, is not also lawful in regard to a minor.*§ From *contrarieties: Frugality is a good, for extrava-*

* That is, says Turnebus, we must give some attention to philosophy, though we are not to spend our whole lives in it. A saying of Neoptolemus in a tragedy of Ennius, to that effect, is cited by Cicero de Orat. ii. 37.

† It is not properly a figure of language or of thought that is here intended, but that sort to which Quintilian alludes, ix. 1, 14, and of which he treats more fully, ix. 2, 65; see also vii. 4, 28. It is a mode of speech by which we indicate obscurely what we do not wish to express plainly. *Spalding.*

‡ Topic. c. 10; De Inv. i. 31.

§ An example from Cicero, Topic. c. 11: "If you have contracted a debt to a woman, you can pay her without having recourse to a

gance is an evil: If war is the cause of sufferings, peace will be the remedy of them: If he deserves pardon who has done an injury unawares, he does not merit reward who has done a service unawares. 74. From *contradictions: He who is wise, is not a fool.* From *consequences* or *adjuncts: If justice is a good, we ought to judge with justice: If deceit is an evil, we must not deceive;* and such propositions may be reversed. Nor are the arguments that follow dissimilar to these; so that they may properly be ranged under the same head, to which, indeed, they naturally belong: *What a man never had he has not lost: A person whom we love we shall not knowingly injure: For a person whom a man has resolved to make his heir, he has had, has, and will have,* affection.* But as such arguments are incontrovertible, they partake of the nature of necessary indications.† 75. The latter sort, however, I call arguments from what is consequent, or what the Greeks call ἀκόλουθον, as *goodness* is consequent upon *wisdom;* (what merely follows, that is, happens afterwards, or will be, I would distinguish by the Greek term παρεπόμενον.) But about names I am not anxious; every one may use what terms he pleases, provided that the character of the things themselves be understood, and that the one be regarded as dependent on time, and the other on the nature of things. 76. Accordingly, I do not hesitate to call‡ the following forms of argument consequential, (though from what precedes in order of time they give an indication of what is to follow in order of time,) of which some have sought to make two kinds: the first regarding *action*, as exemplified in Cicero's speech for Oppius:§ *Those whom he could not lead forth into the province against their will, how could he detain against their will?* the other regarding *time*, as shown in this passage against Verres:‖ *If the Kalends of January put an end to the authority of the prætor's edict, why does not the com-*

trustee; but what you owe to a minor you cannot pay in the same manner."

* *Habuit, habet, habebit.*] The last two words seem to be but little to the purpose. It was for that reason, perhaps, that Aldus omitted them; but they are in all other copies. *Spalding.*

† *Signorum immutabilium.*] See c. 9.

‡ *Vocare*, or some such verb, is wanting in the text, as Regius and others observe.

§ Sect. 69.

‖ Lib. i. c. 42.

mencement of its authority bear date from the Kalends of January? 77. Both these examples are of such a nature that if you reverse the propositions they lead to an opposite conclusion; for it is also a necessary consequence that they who could not have been retained against their will, could not have been led forth against their will.*

78. Those arguments, too, which are drawn from particulars that mutually support each other, and which some rhetoricians wish to be deemed of a peculiar kind, (they call them ἐκ τῶν πρὸς ἄλληλα,† Cicero‡ terms them *ex rebus sub eandem rationem venientibus,*) I would rank with those of necessary consequence; as, *If it is honourable for the Rhodians to let their customs, it is also honourable in Hermocreon to farm them;* and, *what it is proper to learn, it is also proper to teach.* 79. Of which nature is the happy saying of Domitius Afer, not expressed in this manner, but having a similar effect: *I accused, you condemned.*§ There is also a kind of argument from two propositions *relatively consequent,* and which proves the same thing from opposite statements; as, *He who says that the world was produced, says also that it will come to an end; for everything which is produced comes to an end.* 80. Similar to this is the kind of argument by which that which is done is inferred from that which does, or the contrary; which rhetoricians call an argument *from causes.* Sometimes the consquence *necessarily* happens, sometimes *generally,* though *not necessarily.* Thus *a body,* for example, *casts a shadow in the light, and, wherever there is a shadow, it necessarily proves that there is a body.* 81. Sometimes, as I said, the consequence is not necessary, whether with reference to the cause and the effect together, or to the cause or effect severally. Thus, *The sun darkens the skin; but it does not necessarily follow that he whose skin is dark has been darkened by the sun. A road makes a man dusty: but it is not every road that*

* The text has, *Consequens enim est eos, qui inviti duci non potuerint, invitos non potuisse retineri,* but it is justly observed by Gesner that the infinitives ought to change places. He thinks that the mistake may have been Quintilian's own.

† Aristot. Rhet. ii. 23, 3.

‡ De Inv. i. 20.

§ There is a similar expression, as the critics have observed, in Ovid Metam. xiii. 308. *An falso Palemedem crimine turpe est Accusâsse mihi, vobis damnâsse decorum?*

throws up dust; nor does it follow that every man who is dusty has been on a road. 82. Arguments of necessary consequence both from cause and effect* are such as these: *If it is wisdom that makes a man good, a good man is necessarily wise;* and so, *It is the part of a good man to act uprightly, of a bad man to act dishonourably; and accordingly those who act uprightly are considered good, and those who act dishonourably, bad;* and this is a just conclusion. But if we say that *exercise* generally *makes the body strong*, it will not follow that *whoever is strong, has taken exercise, or that whoever has taken exercise, is strong;* nor, *because fortitude secures us from fearing death*, will it follow that *whoever does not fear death is to be thought a man of fortitude;* nor *if the sun gives men the head-ache*, does it follow that *the sun is not useful to men.* 83. The following kind of argument belongs chiefly to the suasory department of oratory: *Virtue confers glory, therefore it is to be followed; pleasure brings infamy, therefore it is to be avoided.*

84. But we are judiciously admonished by writers on oratory that causes are not to be sought too far back; as Medea, for example, says in the play,† "Would that never in the grove of Pelion," as if "the felling of a fir-tree to the earth" there had had the effect of producing her misery or guilt; or as Philoctetes says to Paris,‡ "If you had controlled your passion, I should not now be miserable;" for, retracing causes in this way, we may arrive at any point whatever.

85. To these I should think it ridiculous to add what they call the *conjugate* argument, had not Cicero§ introduced it. An example of it is, *That they who do a* just *thing do* justly, which certainly needs no proof, any more than *Quod compascuum est, compascere licere*, "*On a* common *pasture it is* common *to every man to send his cattle to feed.*"

86. Some call those arguments, which I have specified as drawn from causes or efficients, by another name,* ἐκβάσεις,

* Spalding's text has *quæ utique fiunt*, and he interprets *utique* by *necessariò*, but he inclines to favour *utrinque*, which occurs in three manuscripts, and which will signify, as he remarks, *à causis et ab effectibus.*

† Eurip. Med. v. 3.

‡ In the Philoctetes of Accius, as Philander supposes.

§ Cic. Topic. 3. Aristot. Topic. ii. 3; Rhetor. i. 7, 27.

‖ Spalding has *alieno nomine;* Capperonier reads *alio nomine* on the conjecture of Regius.

that is, *issues*, for nothing is indeed considered in them but how one thing results from another.

Arguments called *apposite* or *comparative* are such as prove the greater from the less, the less from the greater, or equals from equals. 87. A *conjecture* about a fact is supported by arguing from something greater: as, *If a man commits sacrilege, he will also commit an ordinary theft;* from something less, as, *He who readily and boldly tells a lie, will commit perjury;* from something equal, as, *He who has taken a bribe to pronounce unjust judgment, will also take a bribe to bear false witness.* 88. A *question about a point of law* is supported in a similar way: from something greater, as, *If it is lawful to kill an adulterer, it is also lawful to scourge him;* from some thing less, as, *If it is lawful to kill a thief in the night, how much more is it lawful to kill an armed robber?* from something equal, as, *The punishment which is justly pronounced on him who has killed his father, is also justly pronounced on him who has killed his mother.* All these arguments find a place in causes in which we proceed by syllogism.*

89. The following forms are more suitable for questions dependent on definition or quality:† *If strength is good for bodies, health is not less so:‡ If theft is a crime, much more is sacrilege: If abstinence is a virtue, so is continence: If the world is ruled by a providence, a state must be directed by a government: If a house cannot be built without a plan, what are we to think of the conduct of a fleet or an army?* 90. To me it would be sufficient to notice this form merely as a genus, but it is divided by others into species; for arguments are deduced by them from several things to one, and from one to several, (as in the common remark, *What happens once, may happen often,*) from a part to the whole, from genus to species, from that which contains to that which is contained, from the more difficult to the more easy, from the more remote to the

* III. 6, 15.

† See b. iii. c. 6.

‡ All the commentators have passed this sentence in silence, except Spalding, who is staggered at the comparison between the respective values of strength and health, and proposes for *sanitas* to read *inanitas*, with some suitable alteration in the other words. He says that he has met with nothing similar elsewhere. I read with Gedoyn, *Si robur corporibus bonum est, non minus sanitas.* Spalding's text has, *S. r. c. b. non est, m. s.*

nearer, and from the opposites of all these to their opposites; 91. but such arguments are all of the same nature; for they are drawn from greater things and less, or from things of equal force; and, if we pursue such distinctions, there will be no end of particularization; for the comparison of things is infinite, and, if we enumerate every kind, we must specify things that are *more pleasant*, *more agreeable*, *more necessary*, *more honourable*, *more useful*. But let me abstain from speaking of more, lest I fall into that prolixity which I wish to avoid. 92. As to the examples of this kind of arguments, their number is incalculable; but I will notice only a very few. From *the greater*, in Cicero's speech for Cæcina:* *Shall that which alarms armed troops be thought to have caused no alarm in a company of lawyers?* From *the easier*, in his speech against Clodius and Curio:† *Consider whether you could so easily have been made prætor, when he, to whom you had given way, was not made prætor?* 93. From *the more difficult*, in his speech for Ligarius:‡ *Observe, I pray you, Tubero, that I, who do not hesitate to speak of my own act, speak boldly of that of Ligarius;* and, in the same speech,§ *Has not Ligarius ground for hope, when liberty is granted me to intercede with you even for another?* From the less, in his speech for Cæcina:‖ *Is the knowledge that there were armed men a sufficient ground for you to prove that violence was committed, and is the fact of having fallen into their hands insufficient?* 94. To sum up the whole in a few words, then, arguments are drawn from *persons*, *causes*, *places*, *time*, (of which we distinguished three parts, the *preceding*, the *coincident*, and the *subsequent*,) *manner*, (that is, how a thing has been done,) *means*, (under which we included *instruments*,) *definition*, *genus*, *species*, *differences*, *peculiarities*, *removal*,¶ *division*, *beginning*, *increase*, *completion*, *similarity*, *dissimilarity*, *contraries*, *conse-*

* C. 15.

† See iii. 7, 2.

‡ Cicero pro Ligar. c. 3. But the words in Cicero are greatly at variance from those which are given by Quintilian: *Vide, quæso, Tubero, ut, qui de meo facto non dubitem dicere, de Ligarii non audeam confiteri.*

§ C. 10.

‖ C. 16.

¶ See sect. 66.

quences, causes, effects, issues, connexion, comparison; each of which is divided into several species.

95. It seems necessary to be added that arguments are deduced not only from acknowledged facts, but from fictions or suppositions, or, as the Greeks say, καθ' ὑπόθεσιν: and this kind of arguments is found in all the same forms as the other kinds, because there may be as many species of fictitious as of true arguments. 96. By using fiction, I here mean advancing something, which, if it were true, would either solve a question, or assist to solve it, and then showing the resemblance of the point supposed to the point under consideration. That young men, who have not yet left the school, may understand this process the better, I will illustrate it by some examples more suitable to that age.* 97. The law is, that *he who does not maintain his parents is to be imprisoned;* a man does not maintain his parents, and yet pleads that he ought not to go to prison; he will perhaps have recourse to supposition, *if he were a soldier, if he were an infant, if he were absent from home on the public service.*† And to oppose the *option*‡ of a man distinguished for bravery, we might use the supposition, *if he ask for supreme power,* or *for the overthrow of temples.* 98. This is a form of argument of great force against the letter of a law. Cicero adopts it in his defence of Cæcina:§ *whence you, or your slaves, or your steward—if your steward alone had driven me out—but if you have not even a single slave but him who drove me out —;* and there are several other examples in that speech. 99. But the same sort of fiction is of great use in considering the quality of an act:‖ *If Catiline, with the troop of villains that he took with him, could judge of this affair, he would condemn Lucius Muræna.* It serves also for amplification: *If this had happened to you at supper over those*

* That is, such as those to which they have been accustomed in the schools of the rhetoricians. *Spalding.*

† He will endeavour to show that in the circumstances in which he is placed, he ought to be exempt from maintaining his parents as much as if he were a soldier, &c.

‡ To those who had displayed eminent bravery in the field permission was given to choose some reward. This was a fertile subject for the schools, as may be seen in the declamations attributed to Seneca and Quintilian. Comp. vii. 5, 4. *Spalding.*

§ C. 19. The words are given imperfectly by Quintilian.

‖ Pro Muræn. c. 39.

*monstrous cups of yours** — and, *If the republic had a voice.*†

100. These are the common topics of proofs which we find specified, and which it is hardly satisfactory to mention under general heads, as a numberless multitude of arguments springs from each of them, nor, on the other hand, does the nature of things allow us to pursue them through all their species; a task which those who have attempted have incurred the double disadvantage of saying too much and of not saying all. 101. Hence most students of rhetoric, when they have fallen into these inexplicable labyrinths, have, as being fettered by the inflexible restrictions of rules, lost all power of action, even that which they ought to have from their own mind, and, keeping their eyes fixed on a master, have ceased to follow the guidance of nature. 102. But as it is not sufficient to know that *all proofs are to be drawn from persons or from things*, because each of these general heads branches out into an infinity of others, so he who shall have learned that arguments are to be deduced from *preceding* or *coincident* or *subsequent* circumstances, will not necessarily be qualified to judge what arguments proper for any particular cause are to be deduced from such circumstances; 103. especially as most proofs are taken from what is inherent in the nature of a cause, and have nothing in common with any other cause; and these proofs, while they are the strongest, are also the least obvious, because, though we learn from rules what is common to all causes, what is peculiar to any particular cause we have to discover for ourselves. 104. This kind of arguments we may well call arguments from *circumstances*, (as we cannot otherwise express the Greek word περίστασις.) or from those things which are proper to any individual cause. Thus in the case of the priest guilty of adultery,‡ who, by virtue of the law by which he had the power of saving a life, wished to save his own life, the argument proper to the cause, in opposing him,

* Cic. Philipp. ii. 25.

† Cic. Catilin. i. 7.

‡ A case very similar to this is treated in the 284th of the Declamations attributed to Quintilian, of which the title is this: "Let a priest have the power of saving one person from capital punishment: let it be lawful to kill adulterers: a man surprises a priest in the commission of adultery, and, putting him to death, though he claimed his life on the ground of the law, is accused of murder." *Spalding.*

would be, *you would not save one criminal only, for, if you are released, it will not be lawful to kill the adulteress*;* for this argument the law supplies, which prohibits killing the adulteress without the adulterer. 105. Thus, too, in that controversy, in which the law is, *that the bankers might pay the half of what they owed, but demand payment of the whole of what was due to them*,† and one banker requires the whole of his debt from another banker, the proper argument for the creditor, from the nature of the cause, is, "that it was expressly inserted in the law that a *banker* might demand the whole of a debt, for with regard to other people, there was no need of a law, as every one had the right of exacting a debt in full except from a banker."‡ 106. But many new considerations present themselves in every kind of subject, and especially in those cases which depend upon writing, because there is often ambiguity, not only in single words, but, still more, in words taken together. 107. These points for consideration must necessarily vary, from the complication of laws and other written documents produced to support or overthrow them, as one fact brings to light another, and one point of law leads to the consideration of another: as, *I owed you no money; why? you never summoned me for a debt; you took no interest from me; you even borrowed money from me yourself.* A law says, *A son who does not defend his father when accused of treason is to be disinherited;* a son denies that he is amenable to this law *unless his father be acquitted;* and what is his proof? Another law, which says that *he who is found guilty of treason is to be sent into exile with his defender.* 108. Cicero, in his speech for Cluentius, says that Publius Popilius and Tiberius Gutta were *found guilty, not of having bribed the judges, but of having tried to bribe them.* What is the proof?

* As it is said in the declamation just mentioned: *Quid quod ille pro duobus petebat? nam adultera sine adultero non poterat occidi.* So Dig. xlviii. 5, 32: *Dum utrumque occidat; nam si alterum occidat, lege Corneliâ* (de Sicariis) *reus erit.* See Schulting. Jurispr. Ante-Just. p. 746. *Spalding.*

† On this law I can throw no light either from the forum or from the schools. But the argument of the creditor seems incomplete. *Spalding.*

‡ In concluding thus the creditor makes an admission against himself, for, if a banker was not required to pay more than half his debts, he himself could not expect from his debtor more than half of what was owing to him.

That *their accusers, who were themselves found guilty of trying to bribe, were reinstated, according to law,* after having proved Popilius and Gutta guilty of the same offence.*

109. But no less care ought to be taken as to what you advance, than as to the manner in which what you advance is to be proved. Here the power of invention, if not the greatest, is certainly the first requisite; for as arrows are useless to him who knows not at what he should aim, so arguments are useless to him who has not ascertained to what point they are to be applied. 110. This is what cannot be attained by art; and accordingly, though several orators, after having studied the same rules, will doubtless use arguments of a similar kind, yet some will devise more arguments for their purpose than others. Let the following cause, which involves questions by no means common with other causes, be given as an example. 111. *When Alexander had demolished Thebes, he found a document in which it was stated that the Thebans had lent the Thessalians a hundred talents. Of this document Alexander made a present to the Thessalians, as he had had their assistance in the siege. But subsequently, when the Thebans were re-established by Cassander, they demanded payment of the money from the Thessalians.* The cause was pleaded before the Amphictyons. It was admitted that the Thebans had lent a hundred talents, and had not been repaid. 112. The whole controversy depends on this point, that Alexander is said to have made the present to the Thessalians. But it is admitted also that no money was given by Alexander to the Thessalians; and it is therefore a question *whether that which was given was the same as if he had given them money.* 113. Of what profit, then, will grounds of argument be, unless I first settle that *the gift of Alexander was of no avail, that he could not give, and that he did not give.* The commencement of the pleading on the part of the Thebans is at once easy and such as to conciliate favour, as they seek to recover as their right that which was taken from them by force; but then a sharp and vehement dispute arises about the rights of war, the Thessalians alleging that upon those rights depend kingdoms and people, and the boundaries of nations and cities. 114. We have

* Whoever was convicted under any law, might, if he proved another person guilty under the same law, be reinstated in his former condition. *Turnebus.* See Dig. xlviii. 14.

therefore to discover, on the other side, how this cause differs from causes concerning other things that fall into the hands of a conqueror; and the difficulty in this respect lies not so much in the proof as in the proposition to be advanced. We may state in the first place, that, *in regard to whatever can be brought before a court of justice the right of war can have no power; that things taken away by arms cannot be retained except by arms; that, consequently, where arms prevail, the judge has no power, and that when the judge has power, arms have none.* 115. Such a statement is first to be made, that an argument, such for example as the following, may be brought to support it: *That prisoners of war, if they effect a return into their country, are at once free, because what is taken by force of arms cannot be held except by force of arms.* It is peculiar to the cause, also, that the Amphictyons are the judges in it. (For, concerning the same question, there is one mode of proceeding before the centumviri and another before a private judge.*)

116. On the *second head*, we may allege that the *right* † *to the money* could not have been given by Alexander to the Thessalians, as *right can belong only to him who holds it, and, being incorporeal, cannot be grasped in the hand.* This is a proposition more difficult to conceive, than it is, when you have conceived it, to support it with arguments; such, for example, as the following: that *the condition of an inheritor is different from that of a conqueror, because right passes to the one, and the mere property to the other.* 117. It is also an argument peculiar to the cause itself that *the right over what was owing to a whole people could not have passed into the hands of the conqueror, because what a whole people had lent, was due to them all, and as long as a single one of them survived, he was a creditor for the whole sum; and that all the Thebans had not fallen into the power of Alexander.* 118. This argument, such

* *Privatum judicem.*] Take care not to take *judex privatus* in the sense of *judex causæ privatæ.* For the centumviri themselves were judges only of private causes. But "*privati judices* were such as were appointed on arbitrations, and on many kinds of trials, by the prætor, being themselves almost all private individuals, and accustomed to have the assistance of lawyers in their proceedings, as Aquilius assisted in the cause of Quinctius in Cicero; and it is probable that there was no settled body or order of men from whom such judges were chosen." Bach. Hist. Juris. ii. 1, 28. *Spalding.*

† The right to withhold the payment of the money to the Thebans.

is its force, is not upheld by external support, but sustains itself by itself.

On the *third head* the commencement of the argumentation will rest on the more obvious assertion that the *right did not lie in the writing*,* a proposition which may be supported by many confirmations. The intention of Alexander may also be brought into question, and it may be inquired *whether he meant to oblige or to deceive the Thessalians.* It is likewise an argument peculiar to the cause, and the commencement, as it were, of a new discussion, *that the Thebans, even though it be admitted that they lost their right, must be thought to have recovered it by their re-establishment.* Under this head may be inquired, too, what were the views of Cassander? But all pleading on behalf of equity had the highest influence with the Amphictyons.

119. I make these observations, not because I think that the knowledge of the general topics from which arguments are drawn is useless, (for if I had thought so, I should have given no precepts respecting them,) but that those who have studied them, may not think themselves, while they neglect other points, complete and consummate masters of their art; and may understand, that unless they acquire other accomplishments, on which I shall soon give instructions, they will have attained but dumb knowledge. 120. For the power of finding arguments was not a result of the publication of books on rhetoric; all kinds of arguments were conceived before any instruction was given respecting them; and writers afterwards published the forms of them when they were observed and collected. It is a proof of this fact, that writers on rhetoric use old examples of argumentation, extracting them from the orators, and producing nothing new of their own, or anything that has not been said before. 121. The real authors of the art, therefore, are the orators; though certainly some thanks are due to those by whom our labour has been diminished; for the arguments which preceding orators have discovered,

* The advocate of the Thebans will say that the right of the Thebans does not properly lie or consist in the writing, as right is incorporeal, and cannot be taken in the hand; and that, accordingly, though Alexander gave the Thessalians the document by which it appeared that they had borrowed a hundred talents from the Thebans, it did not follow that the Thessalians were thus freed from the obligation of payment. *Capperonier.*

one after another, by the aid of their natural genius, it is not necessary for us to seek, and yet they are all accurately known to us. But this is not sufficient to make an orator, any more than to have studied in the palæstra is sufficient to make an athlete, unless the body be also strengthened by exercise, continence, food, and, above all, by constitutional vigour; while, on the other hand, all these advantages are of no avail without the assistance of art.

122. Let students of eloquence consider also, that every point to which I have called their attention is not to be found in every cause; and that, when a subject for discussion is brought before them, they need not search for every topic of argument, and knock as it were, at its door, to know whether it will answer, and serve to prove what they desire; they need not do this, I say, unless while they are still learners, and destitute of experience. 123. Such examination, indeed, would render the process of speaking infinitely slow, if it were always necessary to examine the several kinds of arguments, and ascertain, by trial, which of them is fit and proper for our purpose; and I know not whether all rules for argument would not be a hindrance to us, unless a certain penetration of mind, engendered in us by nature and exercised by study, conducted us straight to all the considerations suited to any particular cause. 124. For, as the accompaniment of a stringed instrument, when joined to the notes of the voice, is a great assistance to it, yet, if the hand of the player be slow, and hesitates to which string each note of the voice corresponds, until every string has been sounded and examined, it would be better for the singer to be content with what his unassisted power of voice enables him to accomplish. Thus, too, our system of study ought to be fitted and applied, as it were, after the manner of a stringed instrument, to rules of this nature; 125. but such an effect is not to be produced without great practice, in order that, as the hand of the musician, though he be attending to something else, is yet led by habit to produce grave, acute, or intermediate notes, so the variety and number of arguments in a case may not embarrass the judgment of the orator, but may present and offer themselves to his aid; and that, as letters and syllables require no meditation on the part of the writer, so reasons may follow the orator as of their own accord.

CHAPTER XI.

Of examples and instances, § 1—5. Of the efficiency, and various species, of examples, 6—16. Of examples from the fables of the poets, 17, 18. From the fables of Æsop, and proverbs, 19—21. Comparison, 22—25. Caution necessary with respect to it, 26—29. Too much sub-division in it, 30, 31. Comparison of points of law, 32, 33. Analogy, 34, 35. Authority, 36—41. Authority of the gods, 42. Of the judge, and of the adverse party, 43. Examples and authority not to be numbered among inartificial proofs, 44.

1. THE third sort of proofs, which are introduced into causes *from without*, the Greeks call *παραδείγματα*: a term which they apply to all kinds of comparison of like with like, and especially to examples that rest on the authority of history. Our rhetoricians, for the most part, have preferred to give the name of *comparison* to that which the Greek calls *παραβολή*, and to render *παράδειγμα* by *example*. Example however partakes of comparison, and comparison of example. 2. For myself, that I may the better explain my object, let me include both under the word *παράδειγμα*, and translate it by *example*. Nor do I fear that in this respect I may be thought at variance with Cicero,* though he distinguishes *comparison* from *example;* for he divides † all argumentation into two parts, *induction*‡ and *reasoning*,§ as most of the Greeks ‖ divide it into *παραδείγματα* and *ἐπιχειρήματα*, and call the *παράδειγμα rhetoricai induction*. 3. Indeed the mode of argument which Socrates chiefly used was of this nature; for when he had asked a number of questions, to which his adversary was obliged to reply in the affirmative, he at last *inferred* the point about which the question was raised, and to which his antagonist had already admitted something similar; this method was *induction*. This cannot be done in a regular speech; but what is asked in conversation is assumed in a speech. 4. Suppose that a question of this kind be put: *What is the most noble fruit? Is it not that which is the best?* This will at once be granted. *And which is the most noble horse? Is it not that*

* De Inv. i. 30.
† De Inv. i. 31; compare c. 10, sect. 73.
‡ Ἐπαγωγή.
§ Συλλογισμός.
‖ Aristot. Rhet. i. 2, 8.

which is the best? This, and perhaps more questions to the same effect, will readily be admitted. Last of all will be asked the question with a view to which the others were put. *And among men who is the most noble? Is it not he who is the best?* and this may also be allowed. 5. This mode of interrogation is of great effect in questioning witnesses; but in a continuous speech there is a difference; for there the orator replies to himself: *What fruit is the most noble? The best, I should suppose. What horse? That surely which is the swiftest. And thus he is the best of men, who excels most, not in nobleness of birth but in merit.*

All arguments, therefore, of this kind, must either be from things *similar*, or *dissimilar*, or *contrary*. Similitudes are sometimes sought, merely for the embellishment of speech; but I will speak on that subject when the progress of my work requires me to do so;* at present I am to pursue what relates to proof. 6. Of all descriptions of proof the most efficacious is that which we properly term *example;* that is, the adducing of some historical fact, or supposed fact, intended to convince the hearer of that which we desire to impress upon him. We must consider, therefore, whether such fact is completely similar to what we wish to illustrate, or only partly so; that we may either adopt the whole of it, or only such portion of it as may serve our purpose. It is a similitude when we say, *Saturninus was justly killed, as were the Gracchi.* 7. A dissimilitude, when we say, *Brutus put his children to death for forming traitorous designs on their country; Manlius punished the valour of his son with death.* A contrariety, when we say, *Marcellus restored the ornaments of their city to the Syracusans, who were our enemies; Verres took away like ornaments from our allies.*† Proof in eulogy and censure‡ has the same three varieties. 8. In regard also to matters of which we may speak as likely to happen,§ exhortation drawn from similar occurrences is of great effect; as if a person, for example, on remarking that *Dionysius requested guards for his person, in order that, with the aid of their arms, he might make himself tyrant*, should support his remark with

* VIII 3, 72, *seqq.*

† Cicero in Verr. iv. 55.

‡ That is, in the epideictic or demonstrative department of oratory.

§ That is, in the deliberative department of oratory.

the example that *Pisistratus secured absolute power in the same manner.*

9. But, as some examples are wholly similar, such as the last which I gave, so there are others by which an argument for the less is drawn from the greater, or an argument for the greater from the less. *For the violation of the marriage-bed cities have been destroyed;* what punishment is proper to be inflicted on an adulterer?—Flute-players, when they have retired from the city,† have been publicly recalled; and how much more ought eminent men of the city, who have deserved well of their country, and who have withdrawn from popular odium, to be brought back from exile?‡* 10. But unequal comparisons are of most effect in exhortation. Courage is more deserving of admiration in a woman than in a man; and, therefore, if a person is to be excited to a deed of valour, the examples of Horatius and Torquatus will not have so much influence over him as that of the woman by whose hand Pyrrhus was killed; and, to nerve a man to die, the deaths of Cato and Scipio will not be so efficient as that of Lucretia; though these are arguments from the greater to the less.

11. Let me then set before my reader examples of each of these kinds, extracted from Cicero; for from whom can I adduce better? An example of the *similar* is the following from the speech for Muræna:§ *For it happened to myself, that I stood candidate with two patricians, the one the most abandoned, and the other the most virtuous and excellent of mankind; yet in dignity I was superior to Catiline, and in influence to Galba.* 12. An argument from the greater to the less if found in the speech for Milo:‖ *They deny that it is lawful for him, who confesses that he has killed a human being, to behold the light of day; but in what city is it, I ask, that*

* An allusion to the Trojan war. *Spalding.*

† Livy, ix. 30: "The fluteplayers, being prohibited by the preceding censors from having their maintenance, according to ancient usage, in the temple of Jupiter, withdrew, in a body, from discontent, to Tibur; so that there was nobody in the city to supply music at the sacrifices. The senate, actuated by religious feelings, sent deputies to Tibur to use their efforts to effect the return of those men," &c. See also Val. Max. ii. 5, 4. *Spalding.*

‡ Applicable to the recall of Cicero, as Gesner observes.

§ C. 8.

‖ C. 3.

these most foolish of men thus argue? In that city assuredly, which saw the first trial in it for a capital offence in the case of the brave Horatius, who, though the state was not then made free, was nevertheless acquitted in a public assembly of the Roman people, even though he confessed that he had killed his sister with his own hand. Another from the less to the greater is found in the same speech:* *I killed, not Spurius Mælius, who, because, by lowering the price of corn, and by lavishing his patrimony, he appeared to court the populace too much, incurred the suspicion of aspiring to royalty, &c., but him, (for Milo would dare to avow the act when he had freed his country from peril,) whose shameless licentiousness was carried even to the couches of the gods,* &c., with the whole of the invective against Clodius.

13. Arguments from *dissimilar* things have many sources; for they depend on *kind, manner, time, place,* and other circumstances, by the aid of which Cicero † overthrows nearly all the previous judgments that appeared to have been formed against Cluentius, while, by an example of *contrast,* he attacks ‡ at the same time the animadversion of the censors, extolling the conduct of Scipio Africanus who, when censor, had allowed a knight, whom he had publicly pronounced to have formally committed perjury, to retain his horse,§ because no one appeared to accuse him, though he himself offered to bear witness to his guilt if any one thought proper to deny it. These examples I do not cite in the words of Cicero only because they are too long. 14. But there is a short example of contrast in Virgil. ‖

At non ille, satum quo te mentiris, Achilles,
Talis in hoste fuit Priamo.

Not he, whose son thou falsely call'st thyself,
Achilles, thus to Priam e'er behav'd,
Priam his foe.

15. Instances taken from history we may sometimes relate

* C. 27.

† Pro Cluent. 32—52.

‡ Pro Cluent. c. 48.

§ *Traducere equum.*] "To pass his horse." On the ides of July the Roman knights passed in review before the censors, who deprived of their horses such of them as they deemed unworthy of being retained in the equestrian order.

‖ Æn. ii. 539.

in full; as Cicero in his speech for Milo.* *When a military tribune, in the army of Caius Marius, and a relative of that general, offered dishonourable treatment to a soldier, he was killed by the soldier whom he had thus insulted; for, being a youth of proper feeling, he chose rather to risk his life than to suffer dishonour; and that eminent commander accounted him blameless, and inflicted no punishment on him.* 16. To other instances it will be sufficient to allude, as Cicero in the same speech:† *For neither could Servilius Ahala, or Publius Nasica, or Lucius Opimius, or the senate during my consulship, have been considered otherwise than criminal, if it be unlawful for wicked men to be put to death.* Such examples will be introduced at greater or less length, according as they are more or less known, or as the interest or embellishment of the subject may require.

17. The same is the case with regard to examples taken from fictions of the poets, except that less weight will be attributed to them. How we ought to treat them, the same excellent author and master of eloquence instructs us; 18. for an example of this kind also will be found in the speech already cited: *Learned men, therefore, judges, have not without reason preserved the tradition, in fictitious narratives, that he who had killed his mother for the sake of avenging his father, was acquitted, when the opinions of men were divided, by the voice not only of a divinity, but of the divinity of Wisdom herself.* 19. Those moral fables, too, which, though they were not the invention of Æsop,‡ (for Hesiod appears to have been the original inventor of them,) are most frequently mentioned under the name of Æsop, are adapted to attract the minds, especially of rustic and illiterate people, who listen less suspiciously than others to fictions, and, charmed by the pleasure which they find in them, put faith in that which delights them. 20. Thus, Menenius Agrippa is said to have reconciled the people to the senators by that well-known fable about the

* C. 4. See also iii. 11, 14.

† C. 3.

‡ For observations on this point Spaldmg refers to Fabric. Bibl. Gr. ed. Harl. vol. i. p. 624, *sqq.* and p. 593. Plutarch, Conviv. Sept Sap., expresses himself of the same opinion as Quintilian; also Theon. Progym. p. 22. See likewise Bentley's Dissertation on the Epistles of Phalaris and Fables of Æsop.

members of the human body revolting against the belly;* and Horace, even in a regular poem, has not thought the use of this kind of fable to be disdained; as in the verses,†

Quod dixit vulpes ægroto cauta leoni, &c.

To the sick lion what the wily fox
Observed, &c.

The Greeks called this kind of composition, αἶνος,‡ αἰσωπεῖος λόγος, as I remarked,§ and λιξυκός:‖ some of our writers have given it the turn *apologatio*,¶ or "apologue," which has not been received into general use. 21. Similar to this is that sort of παροιμία, which is, as it were, a shorter fable, and is understood allegorically: as a person may say, *Non nostrum onus; bos clitellas:* "The burden is not mine; the ox, as they say, is carrying the panniers."**

22. Next to example, *comparison* is of the greatest effect, especially that which is made between things nearly equal, without any mixture of metaphor: *As those who have been accustomed to receive money in the Campus Martius, are generally most adverse to those candidates whose money they suppose to be withheld, so judges of a similar disposition came to the tribunal with a hostile feeling towards the defendant.* 23. Παραξολή, which Cicero†† calls *comparison*, frequently brings things less obvious into assimilation. Nor is it only like proceedings of men that are compared by this figure, (as in the comparison which Cicero makes in his speech for Muræna,‡‡ *If those who have already come off the sea into harbour, are accustomed to warn, with the greatest solicitude, those who are*

* Livy, ii. 32.

† Hor. Ep. i. 1, 73. Quintilian does not quote exactly.

‡ Equivalent to μῦθος, a "tale" or "story;" see Odyss. xiv. 508, with the note of Eustathius. Hesiod, Op. et. Di. 200, calls the fable of the hawk and nightingale *αἶνος*. See also Æsch. Ag. 1482; Soph. Phil. 1380.

§ He refers no further back than the preceding section. *Spalding.*

‖ Fabric. Bibl. Gr. *ubi supra.*

¶ I have not seen this word anywhere else. *Spalding.*

** *Clitellæ bovi sunt impositæ; plane non est nostrum onus, sed feremus.* Cicero Ep. ad Att. v. 15. Scheffer de Re Vehiculari ii. 2, supposes that *Bos Clitellas* is the commencement of a fable. Panniers were for asses or mules, not for oxen.

†† De Inv. i. 30; see also sect. 2 of this chapter.

‡‡ C. 2.

setting sail from the harbour, in regard to storms, and pirates and coasts, because nature inspires us with kindly feelings towards those who are entering on the same dangers through which we have passed, how, let me ask you, must I, who just see land after long tossing on the waves, feel affected towards him by whom I see that the greatest tempests must be encountered?) but similitudes of this kind are also taken from dumb animals, and even from inanimate objects.

24. Since, too, the appearance of like objects is different in different aspects,* I ought to admonish the learner, that that species of comparison which the Greeks call εἰκών, and by which the very image of things or persons is represented, (as Cassius† says, for instance, *Who is that making such grimaces, like those of an old man with his feet wrapped in wool?*) is more rare in oratory than that by which what we enforce is rendered more credible; as, if you should say that the mind ought to be cultivated, you would compare it with land, which, if neglected, produces briars and thorns, but, when tilled, supplies us with fruit; or, if you would exhort men to engage in the service of the state, you would show that even bees and ants, animals not only mute but extremely diminutive, labour nevertheless in common. 25. Of this kind is the following comparison of Cicero:‡ *As our bodies can make no use of their several parts, the nerves, or the blood, or the limbs, without the aid of a mind, so is a state powerless without laws.* But as he borrows this comparison from the human body in his speech for Cluentius, so, in that for Cornelius,§ he adopts one from horses, and in that for Archias‖ one from stones. 26. Such as the following are, as I said,¶ more ready to present them

* All the texts have *quoniam similium alia facies in tali ratione,* but Spalding observes that he can see no meaning in *tali ratione,* and proposes to read *aliâ ratione,* to which I have made my version conformable.

† Supposed to be Cassius of Parma. See Smith's Dict. of Gr. and Rom. Biography. The line in the text, *Quis istam faciem lanipedis senis torquens?* is thought to be a scazon from one of his epigrams. *Lanipes,* as Spalding remarks, may mean either that the old man's feet were wrapped in wool, or that they were soft and tender as wool.

‡ Pro Cluent. c. 53.

§ See iv. 4, 8.

‖ C. 8.

¶ Such references in Quintilian often given great trouble to the

selves: *As rowers are inefficient without a steersman, so are soldiers without a general.*

But the appearance of similitude is apt to mislead us, and judgment is accordingly to be employed in the use of it; for we must not say that *as a new ship is more serviceable than an old one, so it is with friendship;* nor that, *as the woman is to be commended who is liberal of her money to many, so she is to be commended who is liberal of her beauty to many.* The allusions to *age* and *liberality* have a similarity in these examples; but it is one thing to be liberal of *money*, and another to be reckless of *chastity.* 27. We must therefore consider, above all things, in this kind of illustration, whether what we apply is a proper comparison; just as in the Socratic mode of questioning, of which I spoke a little above,* we must take care that we do not answer rashly; as Xenophon's wife, in the Dialogues of Æschines Socraticus, makes inconsiderate replies to Aspasia; 28. a passage which Cicero† translates thus: *Tell me, I pray you, wife of Xenophon, if your female neighbour had better gold than you have, would you prefer hers or your own? Hers, replied she. And if she had dress and other ornaments suited to women, of more value than those which you have, would you prefer your own or hers? Hers, assuredly, said she. Tell me then, added Aspasia, if she had a better husband than you have, whether would you prefer your husband or hers?* 29. At this question the woman blushed; and not without reason; for she had answered incautiously at first, in saying that she would rather have her neighbour's gold than her own; as covetousness is unjustifiable. But if she had answered that she would prefer her own gold to be like the better gold of her neighbour, she might then have answered, consistently with modesty, that she would prefer her husband to be like the better husband of her neighbour.

30. I know that some writers have, with useless diligence, distinguished comparison into several almost imperceptibly different kinds, and have said that there is a *minor similitude*,

reader and commentator, as is the case here; but I suppose that he refers to sect. 23. *Spalding.*

* Sect. 3.

† De Inv. i. 31. The passage was part of a dialogue in Æschines Socraticus, entitled Aspasia, which is now lost. See Fabr. Bibl. Gr. vol. ii. p. 692, ed Harl. *Spalding.*

as that of *an ape to a man*, or that of *imperfectly formed statues to their originals;* and a *greater similitude*, as *an egg*, we say, *is not so like an egg, as &c.;* and that there is also *similitude* in things *unlike*, as *in an ant and an elephant* in genus, both being animals, and *dissimilitude* in things that are *like*, as *whelps are unlike to dogs and kids to goats*, for they differ in age. 31. They say, too, that there are different kinds of *contraries:* such as an *opposite*, as *night to day;* such as are *hurtful*, as *cold water to fever;* such as are *repugnant*, as *truth to falsehood;* such as are *negatively opposed*, as *hard things to those which are not hard.* But I do not see that such distinctions have any great concern with my present subject.

32. It is more to our purpose to observe, that arguments are drawn from *similar*, *opposite*, and *dissimilar* points of law. From *similar*, as Cicero shows, in his Topics,* that *the heir, to whom the possession of a house for his life has been bequeathed, will not rebuild it if it falls down, because he would not replace a slave if he should die.* From *opposite* points, as, *There is no reason why there should not be a valid marriage between parties who unite with mutual consent, even if no contract has been signed; for it would be to no purpose that a contract had been signed, if it should be proved that there was no consent to the marriage.* 33. From *dissimilar* points, as in the speech of Cicero for Cæcina;† *Since, if any one had compelled me to quit my house by force, I should have ground for an action against him, shall I have no ground for action if a man prevents me by force from entering it?* Dissimilar points may be thus stated: *If a man who has bequeathed another all his silver may be considered to have left him all his coined silver, it is not on that account to be supposed that he intended all that was on his books to be given to him.*

34. Some have separated *analogy* from *similitude;* I consider it comprehended in similitude. For when we say, *As one is to ten, so are ten to a hundred*, there is a similitude, as much as there is when we say, *As is an enemy, so is a bad citizen.* But arguments from similitude are carried still further; as, *If a connexion with a male slave is disgraceful to a mistress, a connexion with a female slave is disgraceful to a master. If pleasure is the chief object of brutes, it may also be*

* C. 3.
† C. 12.

that of men. 35. But an argument from what is *dissimilar* in the cases very easily meets such propositions: *It is not the same thing for a master to form a connexion with a female slave as for a mistress to form one with a male slave;* or from what is *contrary: Because it is the chief object of brutes, it should for that very reason not be the chief object of rational beings.*

36. Among external supports for a cause, are also to be numbered *authorities.* Those who follow the Greeks, by whom they are termed κρίσεις, call them *judicia* or *judicationes,* "judgments" or "adjudications," not on matters on which a judicial sentence has been pronounced, (for such matters must be considered as precedents,) but on whatever can be adduced as expressing the opinions of nations or people, or of wise men, eminent political characters, or illustrious poets. 37. Nor will even common sayings, established by popular belief, be without their use in this way; for they are a kind of testimonies, and are so much the stronger, as they are not invented to serve particular cases, but have been said and confirmed* by minds free from hatred or partiality, merely because they appeared most agreeable to virtue and truth. 38. If I speak of the calamities of life, will not the opinion of those nations† support me, who witness births with tears, and deaths with joy? Or if I recommend mercy to a judge, will it not support my application to observe that the eminently wise nation of the Athenians regarded mercy not as a mere affection of the mind, but as a deity?‡ 39. As for the precepts of the seven wise men, do we not consider them as so many rules of life? If an adulteress is accused of poisoning, does she not seem already condemned by the sentence of Cato, who said that *every adulteress was also ready to become a poisoner?* With maxims from the poets, not only the compositions of orators are filled, but the books also of philosophers who, though they think everything else inferior to their own teaching and writings, have yet not disdained to seek authority

* *Dicta factaque.*] None of the commentators make any remark on the word *facta,* though Cicero is speaking only of *dicta.*

† As the Trausi in Thrace, Herod. v. 4, and the Essedones, Pomp Mel. ii. 1.

‡ There was a well-known altar to Ἔλεος, Mercy or Pity, in the forum at Athens; see Apollod. Bibl. ii. 8, with the note of Heyne, who refers to several other writers. *Spalding.*

from great numbers of verses. 40. Nor is it a mean example of the influence of poetry, that when the Megareans and Athenians contended for the possession of the isle of Salamis, the Megareans were overcome by the Athenians on the authority of a verse of Homer,* (which, however, is not found in every edition,) signifying that *Ajax united his ships with those of the Athenians.* 41. Sayings, too, which have been generally received, become as it were common property, for the very reason that they have no certain author; such as *Where there are friends, there is wealth; Conscience is instead of a thousand witnesses;*† and, as Cicero‡ has it, *Like people, as it is in the old proverb, generally join themselves with like.* Such sayings, indeed, would not have endured from time immemorial, had they not been thought true by everybody.

42. By some writers, the authority of the gods, as given in oracles, is specified under this head, and placed, indeed, in the first rank; for instance, the oracle *that Socrates was the wisest of men.* To this an allusion is rarely made, though Cicero appeals to it in his speech *De Aruspicum responsis*, and in his oration against Catiline,§ when *he points the attention of the people to the statue of Jupiter placed upon the column*, and in pleading for Ligarius,‖ when he allows that *the cause of Cæsar is the better as the gods have given judgment to that effect.* Such attestations, when they are peculiarly inherent in the cause, are called *divine testimonies;* when they are adduced from without, *arguments.* 43. Sometimes, too, we may have an opportunity of availing ourselves of a saying or act of the judge, or of our adversary, or of the advocate that pleads against us, to support the credit of what we assert.

Hence there have been some that have placed *examples* and *authorities* in the number of *inartificial proofs*, as the orator does not invent them, but merely adopts them. 44. But there is a great difference; for witnesses, and examinations, and like matters, decide on the subject that is before the

* Il. ii. 558. See Villoison Proleg. in Hom.; also Arist. Rhet. i. 15, 13; and Strabo p. 394. Plutarch, in his Life of Solon, says that there was a report that Solon forged the verse.

† This is the only place among the ancient writers in which this proverb appears to occur. *Spalding.*

‡ De Senectute, c. 3.

§ III. 8. 9.

‖ C. 6.

judges; while arguments *from without*, unless they are made of avail, by the ingenuity of the pleader, to support his allegations, have no force.

CHAPTER XII.

How far we may use doubtful grounds of argument, § 1—3. Some arguments to be urged in a body, some singly, 4, 5. Some to be carefully supported, and referred to particular points in our case, 6, 7. Not to be too numerous, 8. Arguments from the characters of persons, 9—13. In what order arguments should be advanced, 14. Quintilian states summarily what others have given at greater length, 15—17. Argument too much neglected in the exercises of the schools, 17—23.

1. Such are the notions, for the most part, which I have hitherto held concerning proof, either as conveyed to me by others, or as gathered from my own experience. I have not the presumption to intimate that what I have said on the subject is all that can be said; on the contrary, I exhort the student to search after me, and allow the possibility of more being discovered; but whatever is added, will be pretty much the same with what I have stated. I will now subjoin a few remarks on the mode in which we must make use of proofs.

2. It is generally laid down as a principle that *a proof* must be something certain, for how can what is doubtful be proved by what is doubtful? Yet some things, which we allege in proof of something else, require proof themselves. *You killed your husband, for you were an adulteress.** Here we must bring proof as to the adultery, that, when that point appears to be established, it may become a proof of the other which is doubtful. *Your weapon was found in the body of the murdered man;* the accused denies that the weapon is *his;* and we must establish this circumstance in order to prove the charge. 3. But it is one of the admonitions necessary to be given here, that no proofs are stronger than those which have been shown to be certain after having appeared to be doubtful. *You committed the murder, for you had your apparel stained with blood.* Here the allegation that his apparel *was* stained

* Comp. c. 11, sect. 39.

with blood is not so strong an argument against the accused if he admits it, as if he denies it and it is proved; for if he admits it, his apparel may have been stained with blood from many causes, but if he denies it, he hinges his cause on that very point, and, if he is convicted on that point, he can make no stand on anything that follows; since it will be thought that he would not have had recourse to falsehood to deny the fact, if he had not despaired of justifying himself if he admitted it.

4. We must insist on the strongest of our arguments singly; the weaker must be advanced in a body; for the former kind, which are strong in themselves, we must not obscure by surrounding matter, but take care that they may appear exactly as they are; the other sort, which are naturally weak, will support themselves by mutual aid; and, therefore, if they cannot prevail from being strong, they will prevail from being numerous, as the object of all is to establish the same point. 5. Thus, if any person should accuse another of having killed a man for the sake of his property, and should say, *You expected to succeed to the inheritance, and a large inheritance it was; you were poor, and were greatly harassed by your creditors; and you had offended him to whom you were heir, and knew that he intended to alter his will;* the allegations, considered separately, have little weight and nothing peculiar, but, brought forward in a body, they produce a damaging effect, if not with the force of a thunderbolt, at least with that of a shower of hail.

6. Some arguments it is not sufficient merely to advance; they must be supported; as, if you say that *covetousness was the cause of a crime*, you must show *how great the influence of covetousness is;* or if you say *anger*, you must observe *how much power that passion has over the minds of men;* thus the arguments will be both stronger in themselves, and will appear with more grace, from not presenting, as it were, their limbs unapparelled or denuded of flesh. 7. If, again, we rest a charge upon a motive of *hatred*, it will be of importance to show whether it arose from *envy*, or from *injury*, or from *ambition;* whether it was *old* or *recent;* whether it was entertained towards *an inferior*, *an equal*, or *a superior*, *a stranger* or *a relative;* for all such circumstances require peculiar consideration, and must be turned to the advantage of the side which

we defend. 8. Yet we must not load a judge with all the arguments that we can invent; for such an accumulation would both tire his patience and excite his mistrust, since he can hardly suppose those proofs sufficiently valid, which we ourselves, who offer them, seem to regard as unsatisfactory. On the other hand, to argue in support of a matter that is clear, is as foolish as to bring a common taper into the brightest sunshine.

9. To these kinds of proof some add those which they call *pathetic*, παθητικάς, drawn from the feelings;* and Aristotle, indeed, thinks that the most powerful argument on the part of him who speaks is *that he be a good man;* and as this will have the best effect, so *to seem good* ranks next to it, though far below it. 10. Hence that noble defence of Scaurus:† *Quintus Varius of Sucro says that Æmilius Scaurus has betrayed the interests of the people of Rome; Æmilius Scaurus denies it.* Iphicrates, too, is said to have justified himself in a similar manner;‡ for having asked Aristophon, by whom, as accuser, he was charged with a like offence, *whether he would betray his country on receiving a sum of money*, and Aristophon having replied that he would not, *Have I, then*, rejoined Iphicrates, *done what you would not do?* 11. But we must consider what is the character of the judge before whom we plead, and ascertain what is likely to appear most probable to him; a point on which I have spoken § both in my directions regarding the exordium, and on those regarding deliberative oratory.

12. There is another mode of proof in *asseveration: I did this: You told me this: O horrible deed!* and the like. Such affirmations ought not to be wanting in any pleading, and, if they are wanting, their absence has a very ill effect. They are not to be accounted, however, as great supports, because they may be made on either side, in the same cause, with equal positiveness. 13. Those proofs are stronger which are drawn from the character of a person, and have some credible

* Παθητικὰς *vocant, ductas ex affectibus.*] Turnebus and Capperonier think that we should read ἠθικάς, which indeed suits better with Quintilian's remarks, but to which the words *ductas ex affectibus* are hardly applicable.

† Val. Max. iii. 7, 8.

‡ Aristot. Rhet. ii. 23, 7.

§ IV. 1, 17—22; iii. 8, 36—48.

reason to support them: as, *It is not likely that a wounded man, or one whose son has been murdered, would mean to accuse any other than the guilty person; since, if he makes a charge against an innocent person, he would let the guilty escape punishment.* It is from such reasoning that fathers seek support when they accuse their sons;* or others, whoever they may be, that accuse their own relatives.

14. It is also inquired, whether the strongest arguments should be placed in front, that they may take forcible possession of the judge's mind, or in the rear, that they may leave an impression upon it, or partly in front and partly in the rear, so that, according to Homer's arrangement,† the weakest may be in the middle; or whether they should be in a progressive order, commencing with the weakest. But the disposition of the arguments must be such as the nature of the cause requires; a rule, as I think, with only one exception, *that our series must not descend from the strongest to the weakest.*

15. Contenting myself with giving these brief intimations respecting arguments, I have offered them in such a way as to show, with as much clearness as I could, the topics and heads from which they are derived. Some writers have descanted on them more diffusely, having thought proper to speak of the whole subject of common places, and to show in what manner every particular topic may be treated. 16. But to me such detail appeared superfluous; for it occurs almost to every person what is to be said against *envy*, or *avarice*, or *a malicious witness*, or *powerful friends*, and to speak on all such subjects would be an endless task, as much as if I should undertake to enumerate all the questions, arguments, and opinions in all cases now depending, or that will ever arise. 17. I have not the confidence to suppose that I have pointed out all the sources of argument, but I consider that I have specified the greater number.

Such specification required the greater care, as the declamations, in which we used to exercise ourselves, as military men with foils‡, for the battles of the forum, have for some time

* Alleging that they would not bring them to judgment unless they felt compelled. *Spalding.*

† Iliad. iv. 299. See Cic. de Orat. ii. 77. Also vi. 4, 22; vii. 1, 10.

‡ *Velut præpilatis, sc. hastis.* Salmasius de Cruce, pag. 301, proves that *præpilatæ hastæ* were spears with soft balls fixed on the point to prevent them from inflicting a wound. *Capperonier.*

past departed from the true resemblance of pleading, and being composed merely to please, are destitute of vigour, there being the same evil practice among declaimers, assuredly, as that which slave-dealers adopt, when they try to add to the beauty of young fellows by depriving them of their virility. 18. For as slave-dealers regard strength and muscles, and more especially the beard and other distinctions which nature has appropriated to males, as at variance with grace, and soften down, as being harsh, whatever would be strong if it were allowed its full growth, so we cover the manly form of eloquence, and the ability of speaking closely and forcibly, with a certain delicate texture of language, and, if our words be but smooth and elegant, think it of little consequence what vigour they have. 19. But to me, who look to nature, any man, with the full appearance of virility, will be more pleasing than a eunuch; nor will divine providence ever be so unfavourable to its own work as to ordain that weakness be numbered among its excellences; nor shall I think that an animal is made beautiful by the knife, which would have been a monster if it had been born in the state to which the knife has reduced it. Let a deceitful resemblance to the female sex serve the purposes of licentiousness if it will, but licentiousness will never attain such power as to render that, which it has rendered valuable for its own purposes, also honourable. 20. Such effeminate eloquence, therefore, however audiences, overcome with pleasure, may applaud it, I (for I shall speak what I think) shall never consider worthy of the name of eloquence, language which bears in it not the least indication of manliness or purity, to say nothing of gravity or sanctity, in the speaker. 21. When the most eminent sculptors and painters, if they sought to represent the highest personal beauty in stone or on canvas, never fell into the error of taking a Bagoas or Megabyzus for their model, but choose a young *Doryphorus*.* fitted alike for war or the palæstra, and consider the persons of other warlike youths and athletes truly graceful, shall I, who study to form a perfect orator, give him, not the arms, but the tinkling cymbals, of eloquence? 22. Let the youth whom I am instructing, therefore, devote himself, as much as he can, to the imitation of truth, and, as he is to engage in frequent

* Alluding to the statue of Polycletus, which he made *viriliter puerum*: Plin. H. N. xxxiv. 8. See also Cic. Brut. c. 86; Orat. c. 2.

contests in the forum, let him aspire to victory in the schools, and learn to strike at the vital parts of his adversary and to protect his own. Let the preceptor exact such manly exercise above all things, and bestow the highest commendation on it when it is displayed; for though youth are enticed by praise to what is faulty, they nevertheless rejoice at being commended for what is right. 23. At present, there is this evil among teachers, that they pass over necessary points in silence, and the useful is not numbered among the requisites of eloquence. But these matters have been considered by me in another work,* and must frequently be noticed in this. I now return to my prescribed course.†

* What work is meant is unknown; perhaps the treatise *de Causis Corruptæ Eloquentiæ*, which is lost. See b. vi. Introd.

† See iii. 6, 60; iii. 9, 1; Introduction to this book, sect. 5.

CHAPTER XIII.

Refutation twofold, § 1. Why it is more difficult to defend than to accuse, 2, 3. Deprecation not to be adopted without some ground of defence, 4—6. Nothing to be gained by silence in regard to matters that cannot be defended, 7—11. We may attack some of our adversary's arguments in a body, some singly, 12—14. What arguments may be easily refuted, 15, 16. What arguments of our adversary may be turned to our advantage, 17, 18. Many will fall under conjecture, definition, quality, 19—21. Some of the adversary's arguments may be treated as unworthy of notice, 22. Precedents, which he assumes to be applicable to his case, we must endeavour to prove inapplicable, 23, 24. We may repeat the statements of the adversary so as to weaken them, 25—27. We may sometimes expose the whole charge, sometimes particular parts of it, 28. How we make arguments common to both sides adverse to us; how discrepancies in the pleading of the adversary are to be exposed, 29—33. Some faults easily shown, 34, 35. Not to neglect arguments of our adversary, and not to be too anxious to refute them all, 36, 37. How far we should spare our adversary personally, 38—44. Some pleaders, in endeavouring to expose their adversaries, give occasion against themselves, 45—48. Sometimes, however, we may represent that there are contradictions in his statements, 49, 50. A pleader ought to appear confident of the justice of his cause. 51, 52. Order which we must observe in supporting our own arguments and refuting those of the opposite party, 53—55. We must support our proofs and refutations by the power of eloquence, 56—58. Foolish dispute between Theodorus and Apollodorus, 59, 60.

1. *Refutation* may be understood in two senses; for the part of the defender consists wholly in refutation; and whatever is said by either party in opposition to the other, requires to be refuted. It is properly in the latter sense that the fourth place* is assigned to it in judicial pleadings. But the manner of conducting both is similar; for the principles of argument in refutation can be drawn from no other sources than those used in affirmation; nor is the nature of the common places, or thoughts, or words, or figures,† at all different. 2. It has, in general, little to do with moving the passions.

It is not without reason, however, that it is thought more

* There are five parts in a cause, or judicial pleading, the exordium, the statement of facts, the confirmation, the refutation, and the peroration. *Capperonier.*

† This word is to be understood here, apparently, in the same sense as in iv. 2, 118. *Spalding.*

difficult (as Cicero* often testifies) *to defend* than *to accuse*. In the first place, accusation is more simple, for a charge may be brought in one way, but may be overthrown in many; and it is sufficient for the accuser, in general, that what he advances appear true; while the defendant has to deny, to justify, to take exceptions,† to excuse, to deprecate, to soften, to extenuate, to avert, to affect contempt,‡ to ridicule; and accordingly, on the accuser's side, the pleading is for the most part straightforward and, so to speak, open-mouthed; while on that of the defendant a thousand turns and artifices are required. 3. The accuser, too, generally sets forth what he has previously meditated at leisure; the defendant has frequently to oppose what is entirely unexpected. The accuser produces his witnesses; the defendant has to refute him by arguments drawn from the cause itself. The accuser finds matter for his speech in the odiousness of the charges,§ even though they are false, as parricide, for instance, or sacrilege, or treachery to the state; which the defendant can only deny. Hence even moderate speakers have succeeded in accusations; while none but the most eloquent have proved able defenders; for, to dispatch what I mean in a word, it is as much more easy to accuse than to defend, as it is to make wounds than to cure them.

4. It is a point of great importance to consider *what* the opposite party has said, and *in what manner*. We must first of all examine, therefore, whether that which we have to answer belongs properly to the cause, or has been introduced into it extrinsically; for if it be inherent in the cause, we must either deny it, or justify it, or prove that the action is illegally brought; besides these there is scarcely any means of defence in any kind of trial. 5. *Deprecation*,‖ at least such as is without appearance of defence, is extremely rare, and before such

* Spalding observes that he cannot direct his reader to any passages of the kind in Cicero. Turnebus refers to De Off. ii. 14, but that passage is hardly applicable to the subject; "another to which he refers in the Orator," says Spalding, "I cannot find. That Cicero was oftener engaged in defences than in accusations is apparent from his own testimony in the *Divinatio in Cæcilium*, and from his speeches."

† *Transferat.*] See note on iii. 6, 23.

‡ Comp. iv. 1, 38; v. 13, 22.

§ *Accusator criminum invidiâ*, &c. Gesner justly observes that the reposition *à* should be inserted before *criminum*.

‖ Comp. vii. 4, 17.

judges only as are confined to no certain form of decision;* and even those pleadings† before Caius Cæsar and the Triumviri, in behalf of men of the opposite party, though they depend chiefly on intreaty, yet mingle with it some defensive arguments; for it is surely the expression of a bold defender to exclaim,‡ *What object have we had in view, Tubero, but that we might have the power which Cæsar now has?* 6. But if on any occasion, in pleading for another before a sovereign prince, or any other personage who may condemn or acquit at his pleasure, we have to say that he whose cause we undertake is worthy indeed of death, but of such a character that his life may be spared by a merciful judge, we must consider, first of all, that we shall not have to do with an adversary, but with an arbitrator, and, in the next, that we shall have to adopt the style of deliberative rather than of judicial oratory; for we shall have to counsel him to prefer the praise of humanity to the pleasure of vengeance. 7. As for pleadings before judges that must give sentence according to law, it would be ridiculous to offer precepts in regard to those who confess their guilt. Charges, therefore, which cannot be denied, or set aside by taking exceptions on a point of law, must be justified, whatever be their nature, or we must abandon our cause.

Of negation I have specified two forms; that *the matter in question did not happen*, or that *what did happen is not the matter in question.* What cannot be justified, or set aside on a point of law, must necessarily be denied, not only if a definition of it may prove in our favour, but even if nothing but simple denial is left to us. 8. If *witnesses* be produced, we may say much against them; if *writings*, we may descant on the resemblance of hands. Certainly nothing can be worse than confession. When there is no ground either for justification or denial, the last resource for maintaining our cause is *legal exception.* 9. But, it may be said, there are some charges which can neither be denied nor justified, and to

* Turnebus and Gedoyn understand judges that are above the law, as sovereign princes, the senate, or the people. Spalding thinks that the allusion is to such judges as are meant, iii. 10, 1, to whom the prætor might appoint *multas et diversas formulas judicandi.* The former notion seems to suit better with what follows.

† We have no knowledge of any such pleadings except that of Cicero for Ligarius.

‡ Pro Ligar. c. 4.

which no legal exception can be taken. *A woman is accused*, for instance, *of adultery, who, after being a widow a year, had a child;* here there can be no case for the judge. It is, therefore, most foolishly directed that what cannot be justified should be pretended to be forgotten and passed in silence, for that is the point on which the judge has to pronounce. 10. But if what the accuser alleges be foreign to the cause, or merely accessory to it, I should prefer to say in the defence that it has nothing to do with the question, that it is needless to dwell upon it, and that it is of less importance than our adversary represents it; or I might, indeed, in such a case, pardon the pretence of forgetfulness to which I just now alluded; for a good advocate ought not to fear a slight censure for negligence if he can thus save his client.

11. We must consider also whether we ought to attack the charges of an accuser in a body, or overthrow them one by one. We may assail a number at once, if they are either so weak that they may be borne down in a mass, or so annoying that it is not expedient to engage them in detail; for we must then struggle with our whole force, and, if I may be allowed the expression, must fight with the enemy front to front. 12. Sometimes, if it be difficult to refute the allegations on the other side, we may compare our arguments with those of our opponents, provided there be a probability of making ours appear the stronger. Such arguments against us as are strong from their number must be separated; as, in the example which I gave a little above, *You were the heir of the deceased; you were poor; you were harassed for a large sum of money by your creditors; you had offended the deceased, and you know that he purposed to alter his will.* 13. These arguments, taken together, have much weight; but if you divide them, and consider them separately, they will be like a great flame, which had its strength from a large mass of fuel, but which will dwindle away when that which nourished it is withdrawn, or like large rivers, which, if they are divided into rivulets, become fordable in any part. The form of our refutation, therefore, must be adapted to the interest of our cause; we may sometimes state the arguments of our adversary separately, and sometimes collect them into a body; 14. for, in certain cases, what our opponent has deduced from several particulars, it will be sufficient for us to include in a single

proposition; for example, if the accuser shall say that the defendant had many motives for committing the crime with which he charges him, we may, without recapitulating all the alleged motives, deny simply that the argument from the motives ought to be regarded, because it is not to be supposed that every man who had a motive for committing a crime has committed it. 15. Yet it is best for the prosecutor, in general, to group arguments and for the defendant to disperse them.

But the defendant must consider *in what manner* that which has been stated by the prosecutor must be refuted. If it be evidently false, it will be sufficient to deny it; as Cicero, in pleading for Cluentius,* denies that he, whom the accuser had affirmed to have fallen down dead on drinking from a cup, died the same day. 16. To refute allegations that are inconsistent, or idle, or foolish, requires no art, and it is therefore unnecessary to give either precepts or examples concerning them. That also which is said to have been done in secret, (they call it the *obscure* kind of charge,) and without witness or proof, is sufficiently weak in itself (for it is enough that the adversary cannot attest it); and it is the same with whatever has no reference to the question. 17. It is the business of a pleader, however, at times, to represent the statements of the adversary in such a way that they may either appear contradictory, or foreign to the question, or incredible, or superfluous, or favourable to our side rather than his own. *It is a charge against Oppius† that he embezzled the provisions intended for the soldiers;* a grave accusation; but Cicero shows that it was inconsistent with other charges brought by the same prosecutors, who accused Oppius, at the same time, of attempting to corrupt the soldiers with largesses. 18. *The accuser of Cornelius ‡ engages to produce witnesses of the law having been read by him when tribune;* this charge Cicero renders ineffectual by admitting it. *Quintus Cæcilius solicits the office of prosecuting Verres, because he had been Verres' quæstor;* but Cicero § made that very circumstance appear in his own favour.

* C. 60.

† C. 10, sect. 69.

‡ See iv. 3, 13.

§ Divinat. in Quint. Cæcil. c. 2, 6, 11, et passim. He was a Jew by birth, according to Plutarch, Life of Cicero, as well as the other Cæcilius mentioned by Quintilian, iii. 1, 16. *Spalding.*

19. As to other charges, the mode of refuting them all is much the same; for they are either to be examined by *conjecture*, whether they are true; or by *definition*, whether they properly concern the cause; or, with regard to their *quality*, whether they are dishonourable, unjust, scandalous, inhuman, cruel, or deserve any other designation that falls under the head of quality. 20. It is to be considered, indeed, not only with regard to the first charges in an action, but throughout the whole of it, whether it be *excessively rigorous*, as that of Labienus against Rabirius, under the *lex perduellionis*;* or *unfeeling*, as that of Tubero against Ligarius, whom he accused when an exile, and exerted himself to the utmost to prevent Cæsar from pardoning him; or *presumptuous*, as that against Oppius when he was accused on a letter of Cotta. 21. In like manner other actions may be contemplated, and shown to be *rash*, *insidious*, or *vindictive*. But the strongest allegation that you can bring against an action, is, either that it is fraught with danger to the public, as Cicero says in his defence of Tullius,† *who has ever laid down such a maxim, or to whom could it be permitted without danger to the whole community, to kill a man because he says that he is apprehensive of being killed by him?*‡ or to the judges themselves, as Cicero, speaking for Oppius, exhorts the judges at some length *that they should not sanction that kind of action against the equestrian order.* 22. For some arguments, again, contempt may be at times

* Rabirius was an aged senator, accused of having caused the death of the Tribune Saturninus, forty years after that event had taken place. Labienus brought the charge against him at the instigation of Julius Cæsar, who wished to deter the senate from taking up arms against the popular party. The accusation was made, not on the ground of *læsa majestas*, as was usual, but under the old *lex perduellionis*, the severity of which is apparent from Livy, i. 26. The duumviri appointed to try the cause, in conformity with that law, were Julius Cæsar himself and his relative Lucius Cæsar, by whom he was condemned, and would have been put to death had he not appealed to the people. The people, too, would have ratified his condemnation, had it not been for a stratagem of Quintus Metellus Celer, who removed the military flag that waved over the Janiculum, and thus, according to ancient usage, broke off the proceedings. See Dion Cass. xxxvii. 26—28; and Cic. pro Rabirio passim.

† iv. 2, 131.

‡ *Ne ipse posteriùs occideretur.*] For *posteriùs* Francius would read *potiùs*, Capperonier *priùs*. As the word is useless, I have not translated it.

expressed, as being frivolous or having nothing to do with the question; a course which Cicero frequently adopts; and this affectation of contempt is sometimes carried so far, that we trample with disdain as it were upon that which we should be unable to refute by regular argument.

23. But since the greater part of such charges is founded upon *resemblances*,* we must use our utmost efforts, in refuting them, to discover some discrepancy in what is stated. This is most easily found in legal questions; for the law, to which we refer, was assuredly made with reference to other matters than that under consideration; and so much more easily may variation in the different cases be made to appear.† As to comparisons drawn from brute animals, or inanimate objects, it is easy to elude them. 24. As to examples from historical facts, if they bear hard upon us, they may be met in various ways; if they are ancient, we may treat them as fabulous; if they cannot be doubted, we may endeavour to show that they are inapplicable to the case; for it is impossible that two cases should be alike in all respects; for instance, if Scipio Nasica, after killing Gracchus, should be defended on the resemblance of his act to that of Ahala,‡ by whom Mælius was killed, it may be said that *Mælius aspired to sovereignty, but that Gracchus only brought forward some popular laws; that Ahala was master of the horse, but Nasica a private individual.* If all other means fail us, we must then see whether it can be shown that even the fact adduced as a precedent was not justifiable. What is to be understood with regard to examples, is also to be observed with regard to *previous judgments*.§

25. From the remark which I made above, that it is of important to notice in what manner ‖ the accuser stated his charges, I wish it to be understood, that if he has expressed himself but feebly, his very words may be repeated by ourselves; or, if he has used fierce and violent language, we may reproduce his matter in milder terms; 26. as Cicero says in his defence of Cornelius,

* *Similibus constat.*] Those arguments which are drawn *à simili*, or, as we now say, *à pari*. Capperonier.

† Scarcely any two cases being entirely similar.

‡ iii. 7, 21; v. 9, 13.

§ *De Judicatis.*] *Judicata* or *præjudicia*, or *res antea judicatæ*, concerning which see the second chapter of this book. *Capperonier.*

‖ See sect. 4.

*He took hold of the tablet of the law;** and this we may do with a certain degree of deference to our client; so that, if we have to speak on behalf of a man of pleasure, we may observe that *a rather free course of life has been imputed to him;* and so we call a person *frugal* instead of *niggardly*, or *free of speech* instead of *slanderous.*† 27. We must at any rate take care not to repeat our adversary's charges with their proofs, or to amplify any point in them, unless such as we mean to ridicule, as is done in the following passage from Cicero:‡ *You have been with the army*, says he; *for so many years you have not set foot in the forum; and, when you return after so long an interval of time, do you contend for honours with those who have made the forum as it were their dwelling-place?* 28. In replies, too, the whole accusation may be sometimes repeated; a mode which Cicero adopts in his defence of Scaurus with reference to Bostar;§ speaking in the character of his antagonist; or, if we do not repeat the whole, we may take parts of it, and put them together, as in Cicero's defence of Varenus:‖ *When he was travelling through fields and solitary places with Pompulenus, they met, as they said, the slaves of Ancharius, when Pompulenus was killed, and Varenus immediately after bound, and kept in custody till his father should signify what he wished to be done with him.* Such a mode may always be adopted when the order of facts stated by the accuser appears improbable, and may be deprived of credit by a comment. Sometimes points which prejudice us collectively may be separated; and this is generally the safest method. Sometimes the parts of a reply are naturally independent of each other; of which no example need be given.

29. *Common* arguments are easily apprehended, not only because they may be used by either party, but because they are of more service to the defendant than to the prosecutor; for I think it no trouble to repeat what I have often intimated,¶

* See iv. 4, 8.

† Comp. iv. 2, 117.

‡ Pro Muræn. c. 9.

§ iv. 1, 69. Scaurus was accused of having caused the death of Bostar.

‖ v. 10, 69.

¶ *Quod sæpe monui*] It is conjectured with great ingenuity, and, I think, on very good grounds, by Gesner, that Quintilian had made

that he who is the first to employ a common argument, renders it adverse to him; for that is adverse to him which his opponent can use equally well. * *You say it is not probable that Marcus Cotta contemplated so great a crime; and is it credible, then, that Oppius attempted to commit so great a crime?* 30. But it is the part of a skilful pleader to discover in the case of his adversary particulars that are at variance with one another, or that may be made to appear at variance; and such contradictions are sometimes evident on the very face of a statement, as those noticed by Cicero on the trial of Cælius; † *Clodia says that she lent Cælius money, which is a sign of great friendship on her part; yet alleges that poison was prepared for her by Cælius, which is a sign of the most violent hatred on his.* 31. So, in his speech for Ligarius,‡ *Tubero*, says he, *makes it a crime in Ligarius that he was in Africa; and yet complains that he himself was not admitted into Africa by Ligarius.* Sometimes an inadvertent remark of our opponent affords us an opportunity of exposing his statements; an opportunity given chiefly by those who are fond of fine thoughts, and who, enticed by some opening for their eloquence, do not sufficiently regard what they assert, fixing their attention on the passage before them, and not on the whole scope of the cause. 32. What could appear more prejudicial to Cluentius § than the mark of infamy set on him by the censors? What could have seemed more to his disadvantage than that the son of Egnatius || had been disinherited by his father for the very crime of corrupt judgment by which Cluentius had procured the condemnation of Oppianicus? 33. But Cicero shows that these two facts contradict one another: *But I think that you, Accius, should consider carefully whether you would have the judgment of the censors, or that of Egnatius, to carry the greater weight. If that of Egnatius, you think that judgment light which the censors have pronounced against others, for they expelled this very Egnatius, whom you represent as a man of*

this remark to his pupils orally, for there is no observation of the kind to be found in the work before us. *Spalding.*

* Comp. c. 20.

† Cic. pro Cæl. c. 13.

‡ C. 3.

§ Cic. pro Cluent. c. 48.

|| The son of Egnatius had been one of the *judices* on the trial of Oppianicus.

authority, from the senate. If that of the censors, they retained Egnatius the son, whom his father had disinherited by exercising censorial functions, in the senate, when they ejected his father from it.

34. As to some faults, there is far more folly in committing them than acuteness in noting them. I mean such as advancing a *disputable* for an *indisputable* argument, a *controverted* for an *acknowledged* fact, a point *common to many causes*, for one *peculiar* to the cause in hand, or introducing anything *vulgar, superfluous, too late for the purpose*, or *incredible*. For it is incident to incautious speakers to aggravate a charge, when it is still to be proved; to dispute about an act when the question is about the agent; to attempt what is impossible; to break off a discussion as finished when it is scarcely commenced; to prefer speaking of the party instead of the cause; to attribute to things the faults of persons, *as*, for example, *accusing the decemviral power instead of Appius;* to contradict what is evident; to say what may be taken in another sense from that which they intend; to lose sight of the main point of the cause; to reply to something that is not asserted. 35. This mode of reply, indeed, may be adopted as an artifice in some cases, as when a bad cause requires to be supported by foreign aid; thus *when Verres* was accused of extortion, he was defended for having bravely and actively defended Sicily against pirates.*

36. The same rules may be given with regard to objections that we may have to encounter; but they require the more attention in this case, as many speakers fall into two opposite errors as to objections. Some, even in the forum, neglect them as matters troublesome and disagreeable, and content, for the most part, with what they have premeditated, speak as if they had no opponent; an error which is still more common in the schools, in which not only are objections disregarded, but the declamations themselves are in general so framed, that nothing can be said on the opposite side. 37. Others, erring from too great caution, think that they must reply, if not to every word, at least to every thought or insinuation, even the lightest, of their adversary; a task which is endless and superfluous; for then it is the cause that is refuted, and not the pleader. For my own part, I shall consider a speaker eloquent only when

* Cicero in Verr. v. 1.

he speaks in such a way that whatever he says to benefit his party, the credit of it may seem to be due to his talent and not to his cause, and, if he says anything to injure his party, the blame of it may seem attributable to his cause and not to his talent.

38. Invectives, such as that against Rullus* for the obscurity of his language, against Piso† for his foolishness of speech, against Antony‡ for his ignorance of things and words, as well for his stolidity, are allowed to passion or just resentment, and are of effect in exciting dislike towards those whom the speaker may wish to render hateful. 39. The mode of reply adopted towards advocates should be different; though at times not only their mode of speech, but even their character, their look, their walk, their air, are excusably attacked; as Cicero, in speaking against Quintius,§ assails not only such personal peculiarities, but even *his purple-bordered toga descending to his heels;* for Quintius had pressed hard upon Cluentius by his turbulent harangues.

40. Sometimes, for the purpose of effacing an unpleasant impression, what is said severely by one party is eluded with a jest by the other. In this way Triarius was mocked by Cicero; for when he had observed that the pillars of the house of Scaurus were conveyed through the city on waggons, Cicero retorted, *And I, who have pillars from the Alban mount, had them brought in panniers.* Such ridicule is more freely allowed against an accuser, whom concern for his client sometimes leads a defender to assail with severity. 41. But what is allowed against all pleaders, without any violation of good manners, is *complaint*, if they can be said to have craftily passed in silence, or abbreviated, or obscured, or put off any point. 42. A change in the direction of the defence, too, is often a subject of blame; a point on which Accius‖ objects in pleading against Cluentius, and Æschines¶ in his speech against Ctesiphon, Accius complaining that Cicero would adhere only to the letter of the law, and Æschines that Demosthenes would say nothing

* Cic. De Lege Agrariâ, ii. 5.
† Cic. in Pis. c. 1 and 30.
‡ Philipp. ii. 4; iii. 4; xiii. 19.
§ Cic. pro Cluent. c. 40.
‖ Cic. pro Cluent. c. 52.
¶ Comp. iii. 6, 3.

on the subject of the law. But our declaimers should be especially admonished not to offer such objections as may be easily answered, or imagine that their opponent is an absolute fool. But as fertile common-places, and thoughts that may please the multitude, occur to us, we make to ourselves matter for our speeches, moulding it to our fancy; so that this verse may be not disadvantageously borne in mind:

*Non malè respondit; malè enim prior ille rogârat.**

The answer's nonsense; that we all admit;
But nonsense only could th' objection fit.

43. Such a practice will be fatal to us in the forum, where we shall have to reply to our adversary, and not to ourselves. It is said that Accius being asked why he did not plead causes, when he displayed in his tragedies such power in making able replies, gave this reason, *that on the stage he made his characters say what he wished, but that in the forum his adversaries would say what he did not wish.* 44. It is therefore ridiculous in exercises which are preparatory to the forum, to consider what reply may be made before we consider what objections may be offered; and a good teacher ought to commend a pupil when he ably imagines anything favourable to the opposite side as much as when he conceives anything serviceable to his own.

45. There is another practice with regard to objections that seems to be always permissible in the schools, but ought rarely to be allowed in the forum. For where when we have to speak first on the side of the prosecutor,† in a real cause, how can we make replies to objections, when our opponent has not yet spoken? 46. Many speakers, however, fall into this absurdity, whether from a habit contracted in the schools, or from fondness for speaking, and afford amusement and sport to those who answer them, and who sometimes jestingly remark that *they said nothing, and could have said nothing so foolish;* sometimes, that *they have been well reminded by their opponent, and thank him for his assistance;* but most frequently, what is, indeed, a very strong argument in their favour, that *their oppo*

* Whence this verse comes, says Spalding, I know not. I have borrowed Guthrie's translation of it.

† *Nam loco à petitore primo*] Quando primo loco dicimus *à petitore*, id est, in gratiam petitoris. *Capperonier.*

nent would never have replied to objections that had not been made, unless he knew that such objections were well founded, and had been impelled to acknowledge their justice by the voice of conscience. 47. Thus Cicero, in his speech for Cluentius * says, *You have repeatedly observed, that you are informed that I intend to defend this cause by the aid of the letter of the law. Is it so? Am I then to suppose that I am secretly betrayed by my friends? Is there some one among those, whom I fancy to be my friends, that reports my designs to the enemy? Who is it that told you of my intention? Who has been so perfidious? To whom have I communicated it? No one, I conceive, is to blame; it was, doubtless, the law itself that informed you.* 48. But some, not content with answering imaginary objections, amplify whole portions of them, saying that *they knew the opposite party would say so and so, and support their assertions with such and such arguments.* This practice Vibius Crispus, a man of pleasing and refined humour, very happily ridiculed when I was at the bar: *I*, said he, in reply to an opponent of that sort, *do not make those objections, for to what purpose is it that they should be twice made?* 49. Sometimes, however, something like an answer to an objection may be made, if anything be comprised in the depositions on the part of the adversary be discussed in a private consultation of advocates,† for we shall then reply to something said by the opposite party and not to anything imagined by ourselves; or if the cause be of such a nature that we can state certain objections besides which no others can be offered; as, for example, when stolen goods are found in a house, he who is accused of having stolen them must, if he deny the charge, necessarily say either *that they were brought thither without his knowledge*, or *deposited with him*, or *given to him;* to all which allegations we may reply, even though they have not been advanced. 50. In the schools, too, we may very properly obviate objections,‡ so as to exercise ourselves for speaking in

* C. 52.

† *Advocationibus.*] By this word I understand private meetings of the advocates. *Spalding.* "Patronorum et amicorum consultationes." *Turnebus.*

‡ *At in scholis rectè et contradictionibus occurremus, ut in utrumque locum, id est primum et secundum, simul exerceamur.*] This is the form in which Spalding gives this passage. But the copies vary. Some of the manuscripts have *rectè et plenaribus contradictionibus.* Turnebus

both places, the first and the second, on the side of the prosecutor. Unless we do so, we shall never acquire practice in combating objections, as we have no adversary to whom we are called upon to reply.

51. It is also a fault in a pleader to be too anxious, and to labour at removing every thing that stands in his way; for such solicitude excites distrust in the judge; and very frequently arguments, which, if stated off hand, would have removed all doubt, but which are tardily advanced through excessive precaution, lose credit, because the advocate himself seems to think something additional necessary to support what he alleges. An orator, therefore, should carry confidence in his manner, and speak as if he had the highest assurance of the success of his cause. 52. This quality, like all others, is eminently apparent in Cicero; for his extraordinary affectation of security is like security itself; and there is such authority in his language as supplies the place of proof, so that we do not venture to doubt his statements. But he who can perceive what is the strongest point in his adversary's case and his own, will easily judge what arguments he will have to oppose or to urge,

53. As to *order*, there is no part of a cause in which it will give us less trouble; for, if we are the prosecutors, we have first to support our own allegations, and then to refute what is brought against them; if we are defendants, we have to commence with refutation. 54. But from what we advance against any objection there arise other objections, and sometimes to a great extent; as the *hands* * of gladiators, which are called

and Burmann would therefore read *rectè et probationibus et contradictionibus*, so that there may be two objects to which *utrumque locum* may properly be referred.

* (*gladiatorum manus.*] This passage is almost wholly unintelligible to us, from our want of knowledge of the gladiatorial movements to which Quintilian refers. "By comparing the passage," says Spalding, "with vi. 4, 8, ix. 1, 20, and passages of other authors, it is pretty clear that *manus* is used for *ictus*, in conformity with the interpretation of the old scholiast on Statius Theb. vi. 788; see also Lucan. vi. 190. . . . . But the matter is obscure, as well in itself as in relation to that which is compared to it." "Nothing is more certain," says Burmann, "than that *manus primæ, secundæ*, &c., are modes of assault, in which the gladiators were disciplined by the masters of the schools." Capperonier refers to *æquis manibus* in Ammian. Marcell. xxiv. 4, 18, which however affords little illustration.

the *second*, become the *third*, if the *first* was intended to provoke the assault of the adversary, and the *fourth*, if the challenge be repeated, so as to make it necessary to stand on guard twice and to attack twice; and this process may lead still further.

55. Refutation includes also that simple kind of proof of which I have given an example above,* proceeding from the feelings, and consisting in mere affirmation, such as that of Scaurus, of which I have already spoken;† and I know not whether such sort of proof may not even be used more frequently when a denial is made. But the chief object of each party must be to see where the main point lies; for it too frequently happens in a cause that many points are disputed, while judgment is to be passed on few.

56. In these particulars consists the art of proving and refuting; but it requires to be supported and embellished by the powers of the speaker; for however well adapted our arguments may be to establish our case, they will nevertheless be but weak unless they are urged with extraordinary vigour by him who uses them. 57. Those common-place observations, accordingly, concerning *witnesses*, *written evidence*, *arguments*, and other matters of the kind, produce great impression on the minds of the judges; as well as those peculiarly arising from the cause, in which we *praise* or *blame* any action, show that it is *just* or *unjust*, or make it appear *greater* or *less*, *worse* or *better*, than it really is. Of these some are useful in the comparison of one argument with another, others in the comparison of several, others in influencing the decision of a whole cause. 58. Some, too, serve to prepare the mind of the judge, others to confirm it in the opinions which he has already formed; and such preparation or confirmation has reference sometimes to particular heads, and may be offered as may be suitable for each. 59. I wonder, therefore, that it should have been disputed, and with no small acrimony, between two leaders of opposite sects as it were, *whether arguments from moral considerations should accompany each particular head*, as Theodorus would have it, or *whether the judge should be informed before his feelings are excited*, as Apollodorus directs; as if no middle course could be pursued, and

* C. 12, sect. 12.
† C. 12, sect. 10.

as if nothing could be ordered to suit the interests of the cause. But it is men who do not speak in the forum themselves that give these directions; and their systems of rules, which they have composed at leisure and at ease, are disturbed by the necessary confusion of battle. 60. For almost all authors, who have set forth methods of speaking, as a kind of mysteries,* have bound us not only to certain subjects for our arguments, but by fixed laws as to the form of expressing them. But having offered these few remarks on this head, I shall not shrink from communicating what I myself think about it, that is, what I observe to have been the practice of the most eminent orators.

CHAPTER XIV.

Of the enthymeme and its parts, § 1—4. Of the epicheirema and its parts, 5—9. Not always of the same form, 10—13. The epicheirema of the orators is the syllogism of the philosophers, 14—16. All the parts of it not always necessary to be specified, 17—19. Three modes of opposing this form of argument, 20—23. How the enthymeme differs from the syllogism, 24—26. We must not crowd our speech with rhetorical forms of argument, 27—32. We must not leave our arguments unembellished, 33—35.

1. The term *enthymeme* rhetoricians apply not only to the argument itself, that is the *matter* which is used for the proof of any thing else, but to the enunciation of the argument, which they make, as I said,† twofold; one from *consequents*, which consists of a proposition and a proof immediately following it; as in this passage of Cicero's speech for Lijarius:‡ *The cause was then doubtful, because there was something that might be sustained on each side; but now that side must be deemed the stronger to which even the gods have given support;* this is an enthymeme, for it contains a proposition and a reason, but no logical conclusion, and is therefore an imperfect syllogism; 2. the other from *opposites*, which some call

* Burmann compares Cic. de Orat. i. 47: *Explicet nobis, et illa dicendi mysteria enunciet.* Gesner refers to c. 14, sect. 27.

† C. 10, sect. 2.

‡ C. 6.

the only form of enthymeme,* and in which the proof is much stronger. Such is that in the speech of Cicero for Milo :† *You sit therefore as avengers of the death of a man to whom you would be unwilling to restore life even if you thought it could be restored by your means.* 3. This form is sometimes made to consist of several clauses, of which we have an example by the same orator on behalf of the same client : *Him, therefore, whom he would not kill to the satisfaction of all, was he willing to kill to the dissatisfaction of some? Him, whom he did not dare to kill with the sanction of the law, in a favourable place, at a favourable time, and with impunity, did he boldly resolve to kill unjustly, in an unfavourable place, at an unfavourable time, and at the hazard of his own life?* 4. But the best kind of enthymeme appears to be that in which a reason is subjoined to a proposition dissimilar or opposite, as in this passage of Demosthenes :‡ *For, if acts have at times been committed against the laws, and you have imitated them, it does not follow that you should therefore escape punishment, but much rather that you should be condemned ; for if any of the violators of laws had been condemned, you would not have written this, and, if you are condemned, no other will write anything similar.*

5. Of the *epicheirema* § four, five, and even six parts are made by some rhetoricians ; Cicero || makes at most five ; the *proposition*, or major, with its *reason ;* the *assumption*, or minor, with its *proof ;* and, as the fifth, the *conclusion ;* but as the major has sometimes no need of a reason, and the minor no need of proof, and as there is sometimes, too, no need of a conclusion, he thinks that the epicheirema may at times consist of only four, or three, or even two parts. 6. To

* See c. 10, sect. 2.

† C. 29.

‡ In Androtionem, p. Reisk. 595.

§ Quintilian, after noticing several opinions about the parts of an epicheirema, at last adopts that of Aristotle, that there are three necessary parts of it, the *proposition*, the *assumption*, and the *conclusion*. That which is the subject of inquiry is comprehended in the *proposition*, which logicians call the *major* ; that by which it is proved is called the *assumption* or *minor* ; and that which is collected from the major and minor is the *conclusion* or *inference*. Turnebus. Cicero makes five parts by attaching a reason to the major and a proof to the minor.

‖ De Inv. i, 37 ; Script. ad Herenn. ii. 18.

me, as well as to the greater number of authors, there appears to be not more than three; for such is the nature of reasoning, that there must be something about which there is a question, and something by which it is to be proved; and a third may be added as resulting from the agreement of the two former. Thus there will be first the *proposition*, or major; secondly, the *assumption*, or minor; and thirdly, the *conclusion;* for the reason of the first part and the proof of the second may be included in those parts to which they are attached. 7. Let us take, accordingly, an example of the five parts from Cicero:* *Those things are better managed which are regulated by some plan than those which are conducted without any fixed design;* "this," says Cicero, "they call the first part, and think that it ought to be established with various reasons and the most copious eloquence possible." For myself, I consider the whole proposition with its reasons as but one part; else, if the reasoning be called a part, and that reasoning be various, there must necessarily be various parts. 8. He then gives the assumption, or minor: *But of all things nothing is managed better than the whole world;* "and," he adds, "of this assumption they introduce its proof as a fourth part;" but I say the same concerning the assumption as concerning the proposition. 9. "In the fifth place," he continues, "they place the conclusion, which either infers that only which necessarily results from all the preceding parts, as, *Therefore the world is regulated by some plan;* or, after briefly bringing together the proposition and assumption, adds what is collected from them, as, *But if those things are better managed which are regulated by a plan than those which are conducted without a plan, and if of all things nothing is managed better than the whole world, it follows therefore that the world is regulated by a plan.*" A third part I accordingly admit.

10. In the three parts, however, which I have made, there is not always the same form. There is ONE FORM in which the same is expressed in the conclusion as in the major proposition: *The soul is immortal, for whatever has its motion from itself, is immortal: But the soul has its motion from itself: Therefore the soul is immortal.* This form prevails not only in detached arguments, but throughout all causes, such at least

* De Inv. i. 34.

as are simple, and in the various questions in causes.* 11. For all causes and all questions have a *first proposition:* as, *You have committed sacrilege;* and, *It is not every one that has killed a man that is guilty of murder:* and attached to this a proposition, a *reason*, (which, however, is more expanded in causes and portions of causes than in detached arguments,) and, lastly, a *conclusion*, in which they commonly show, either by a full enumeration of particulars, or a short recapitulation, what they have established. In this kind of epicheirema the proposition is doubtful, for it is about the proposition that the question is. 12. In ANOTHER FORM the conclusion is not indeed the same as the major proposition, but has the same force: *Death is nothing to us, for what is dissolved into its elements, is without consciousness; and that which is without consciousness is nothing to us.* In a THIRD FORM the proposition is not the same as the conclusion: *All animated things are better than things inanimate: But nothing is better than the world: The world therefore is animated.* What is here the conclusion might be made the major proposition;† for the reasoning might be stated thus: *The world is animated, for all animated things are better than things inanimate.*‡ 13. But this major proposition is either an acknowledged truth as in the last example, or requires proof, as, *He who wishes to lead a happy life, ought to become a philosopher;* this is not universally admitted; and the conclusion cannot be drawn unless the premises be established. The minor proposition, too, is sometimes universally acknowledged, as, *But all wish to live a happy life*, and sometimes requires to be proved, as, *What is dissolved into its elements is void of consciousness*, for it is uncertain whether the soul, when detached from the body, may not be immortal, or exist at least for a certain time. I may observe that what some call the *assumption*, or minor proposition, others call the *reason*.

14. But the epicheirema differs in no respect from the

* *In quæstionibus.*] *Quæstiones* are to be distinguished from the *causa universa;* see iii. 6, 9, 10. *Spalding.*

†-All editions have *Hic potest videri de re contentio;* but as no good sense can be extracted from the words, Spalding proposes to read *Hæc potest etiam videri intentio*, i.e. *propositio.* I have adopted this conjecture in my translation,

‡ He has made this example bipartite instead of tripartite, as Spalding observes.

syllogism, except that the syllogism has a greater number of forms, and infers truth from truth; while the epicheirema is generally employed about probabilities; for if it were always possible to prove what is disputed by what is acknowledged, there would scarcely be any work for the orator in the matter; since what need would there be of superior ability to reason thus: 15. *The property belongs to me, for I am the only son of the deceased*, or, *I am the sole heir, since by the laws respecting property the property of a testator is given to the heir according to the purport of the will; and to me therefore the property belongs.* 16. But when the reason given becomes itself a matter of dispute, we must render that certain by which we seek to prove what is uncertain; for instance, if it be said by the adversary, *You are not his son*, or, *You are not legitimate*, or, *You are not the only son*, or, again, *You are not the heir*, or, *The will is not valid*, or, *You are not capable of inheriting*, or, *You have co-heirs*, we must establish a just ground on which the property ought to be adjudged to us. 17. But when a long chain of reasoning intervenes, a recapitulatory conclusion is requisite. In other cases, a proposition and reason may often be sufficient:* *The laws are silent amidst arms, and do not require their sanction to be waited for, when he who would wait for it must suffer an unjust death before a just penalty could be exacted.* Hence it has been observed that the form of enthymeme which rests upon *consequents* is similar to a *reason*. Sometimes, again, a single proposition is judiciously given alone, without any reason, as that which we just now cited, *The laws are silent amidst arms.* 18. We may also commence with the reason, and then draw a conclusion, as, in the same speech, *But if the twelve tables allow a thief to be killed with impunity under any circumstances, and a thief in the day if he defend himself with a weapon, who can suppose that in whatever case a man has been killed, he who killed him must suffer punishment?* Cicero has also made some variation in this form, and put the reason in the third place: *When he sees that the sword is sometimes put into our hands by the laws themselves.* 19. The following sentence, again, takes the form of that which precedes: *But how can death be unjustly inflicted on a lier-in-wait and a robber?* This is the proposition. *What is the object of our escorts, of our*

* Cic. Pro Mil. c. 4.

weapons? This is the reason. *Which certainly we should not be allowed to have, if we were under no circumstances to make use of them.* This is a conclusion from the proposition and the reason.

20. This mode of argument is refuted in three ways; that is, it is attacked in each of its parts; for the proposition may be combated, or the assumption, or the conclusion, or sometimes all the three. For example, the proposition that *He is justly killed who lies in wait to kill*, may be combated, for the first question in the defence of Milo is, *Whether he should be allowed to live who confesses that a man has been killed by his hand?* 21. The assumption, or minor proposition, may be assailed by all the arts which I have mentioned in the chapter on refutation.* As to the reason, we may observe that it is sometimes true when the proposition to which it is attached is false; and that a false reason is sometimes attached to a true proposition. *Virtue is a good*, is a true proposition; but if any one add as a reason, *because it makes men rich*, a false reason is given for a true proposition. 22. As to the conclusion, it is either denied to be just when it expresses something different from what can be fairly deduced from the premises, or is alleged to have nothing to do with the question: *A lier-in-wait is justly put to death, for he who prepared himself to offer violence as an enemy, ought also to be repelled as an enemy; Clodius, therefore, as an enemy, was justly put to death:* here the conclusion is false, for it has not yet been proved that Clodius was a lier-in wait. 23. On the other hand, it would be a just conclusion to say, *A lier-in-wait, therefore, as an enemy, was justly put to death*, but it would be nothing to the purpose; for it had not previously been proved that Clodius was a lier-in-wait. But though the proposition and reason may be true, and the conclusion false, yet if the proposition and reason are false, the conclusion cannot be true.

24. The *enthymeme* is called by some an oratorical syllogism, by others a part of a syllogism, because the syllogism has always its regular proposition and conclusion, and establishes by means of all its parts that which it has proposed; while the enthymeme is satisfied if merely what is stated it be understood. 25. A syllogism is of this form: *Virtue is the only*

* C. 13 of this book.

good, for that only is good of which none can make an ill use: But none can make an ill use of virtue: Therefore virtue is the only good: the enthymeme will consist only of the consequents, *Virtue is a good, because none can make an ill use of it.* A negative syllogism will be of this nature: *Money is not a good, for that is not a good of which any one can make a bad use: But any one can make a bad use of money: Therefore money is not a good:* here the enthymeme will consist of the opposites:* *Is money a good, when any one can make a bad use of it?* 26. The following sentence has the syllogistic form: *If money, which consists of coined silver, comes under the general term silver, he that bequeathed all his silver bequeathed also his money consisting in coined silver: But he did bequeath all his silver: Therefore he bequeathed also his money consisting of silver;* but for an orator it is sufficient to say, *When he bequeathed all his silver, he bequeathed also his money which consists of silver.*

27. I think that I have now gone through the mysteries† of those who deliver precepts on rhetoric. But judgment must be exercised in applying such directions as I have given. For though I do not think it unlawful to use syllogisms occasionally in a speech, yet I should by no means like it to consist wholly of syllogisms, or to be crowded with a mass of epicheiremata and enthymemes, for it would then resemble the dialogues and disputations of logicians, rather than oratorical pleading; and the two differ widely from one another. 28. Your men of learning, who are seeking for truth amongst men of learning, examine every point with the utmost minuteness and scrupulosity, with the view of bringing it to clearness and certainty, claiming to themselves the offices of discovering and judging what is right, of which they call the one τοπική, "the art of finding arguments," and the other κριτική, "the power of judging of their soundness;" 29. but we orators must compose our speeches to suit the judgment of others, and must frequently speak before people altogether uneducated, or at least ignorant of any other literature than what we teach them, and unless we allure them by gratification, attract them . . force, and occasionally excite their feelings, we shall never

* *An bonum est pecunia,* &c.] Spalding dislikes the abrupt interrogation, and would read negatively, *non bonum est,* &c.

† *Sacra.*] See c. 13, sect. 60.

impress upon them what is just and true. 30. Oratory should be rich and brilliant; but it will have neither of those qualities, if it be pieced out of regular and frequent syllogisms, expressed almost always in the same form, for it will then incur contempt from appearing mean, and aversion from looking servile; if it is copious, it will excite satiety; if it attempts to be swelling, it will meet disdain. 31. Let it hold its course, therefore, not along foot-paths, but through open fields; let it not be like subterranean springs confined in narrow channels, but flow like broad rivers through whole valleys, forcing a way wherever it does not find one. For what is a greater misery to speakers than to be slaves to certain rules, like children imitating copies set them, and, as the Greeks proverbially express it, *taking constant care of the coat which their mother has given them*?* 32. Must there always be proposition and conclusion, from consequents and opposites? Is the speaker not to animate his reasoning, to amplify it, to vary and diversify it with a thousand figures, making his language appear to grow and spring forth naturally, and not to be manufactured, looking suspicious from its art,† and showing everywhere the fashioning of the master? What true orator has ever spoken in such a way? In Demosthenes himself are not the traces to be found of such regularity and art very few? Yet the Greeks of our own day (the only respect in which they act less judiciously than ourselves) bind their thoughts as it were in chains, connecting them in an inexplicable series, proving what is undisputed, confirming what is admitted, and calling themselves, in these points, imitators of the ancients; but if they are asked whom they imitate, they will never give an answer.

33. Of figures I shall speak in another place.‡ At present, it seems necessary only to add, that I do not agree with those who think that arguments are always to be expressed in a pure, lucid, and precise style, but neither copious nor ornate. That they should be precise and perspicuous indeed, I admit, and, on matters of little consequence, set forth in plain

* This proverb is given by Plutarch in his first oration *de Alexandri Fortunâ*, vol. ii. p. 330 B.

† *Arte suspecta.*] Many copies have *suscepta*, which will also make good sense. The reader must be careful, as Spalding remarks, not to take either of them in the ablative case.

‡ Book ix. 1, 2, 3.

language, and in terms as appropriate and familiar as possible; but, if the subject be of a higher nature, I think that no ornament should be withheld from them, provided that it causes no obscurity. 34. For a metaphor often throws a flood of light on a subject; so much so, that even lawyers, whose solicitude about the propriety of words is extreme, venture to call *litus*, "the sea-shore," the part where the wave *eludit*, "sports."* 35. The more rugged a subject is, too, by nature, the more we must recommend it by charms of expression; argument is less suspected when it is disguised, and to please the hearer contributes greatly to convince him. Otherwise we must pronounce Cicero deserving of censure, for using, in the heat of his argumentation, the metaphorical expressions, *The laws are silent amid arms*, and, *The sword is sometimes presented to us by the laws themselves.* But moderation must be observed in the use of such figures, that, while they are an embellishment to a subject, they may never be an incumbrance to it.

* See Cic. Topic. c. 7. "Aquillius,——when there was any discussion about shores, all of which you maintain to be public,——used to define a shore *qua fluctus eluderet*, where the wave sported."——See also Cicero de Nat. Deor. ii. 39. *Eludere* is to be taken intransitively in the sense of *exundare*.

BOOK VI.

INTRODUCTION.

Quintilian laments that his son, whose improvement, in conjunction with that of the sons of Marcellus and Cæsar, he had had in view in the composition of this work, had been carried off by death, § 1, 2. He had previously lost, during the composition of another work, a younger son, as well as his wife, 3—6. Abilities of which his children gave indications, 7—9. His grief; he intreats indulgence if, in consequence of it, he pursues his work with less spirit, 10—16.

1. Having entered upon this undertaking, Marcellus Victor, principally at your request,* but with a desire, at the same time, that some profit to well-disposed youth might arise from my labours, I have applied to it recently with great diligence, from the necessity, almost, of the office conferred upon me,† yet with a regard also to my own gratification, thinking that I should leave this work to my son, whose remarkable ability deserved even the most anxious attention of a father, as the best portion of his inheritance, so that if the fates should cut me off before him, as would have been but just and desirable, he might still have his father's precepts to guide him. 2. But while I was pursuing my design day and night, and hastening the completion of it, through fear of being prevented by death, fortune sent so sudden an affliction upon me, that the result of my industry interests no one less than myself, for I have lost by a second severe bereavement that son, of whom I had conceived the highest expectations; and in whom I reposed my only hopes for the solace of my age.‡ 3. What shall I now do? Or what further use can I suppose that there is for me upon the earth, when the gods thus animadvert upon me? When I had just begun to write the book which I have published, *On the Causes of the Corruption of Eloquence.*§ it happened that I was struck

* See the Preface to the work, sect. 6.

† See the Introduction to b. iv. sect. 2.

‡ He means the loss of his son, at the age of ten years. He had previously lost another at the age of five.

§ This work is lost. The *Dialogus de Oratoribus, sive de Causis Corruptæ Eloquentiæ* is, as is generally supposed, the composition of Tacitus.

with a similar blow. It would have been best for me, therefore, to have thrown that inauspicious work, and whatever ill-omened learning there is in me, into the flames of that premature funeral pile which was to consume what I loved, and not to have wearied my unnatural prolongation of life with new and additional anxieties. 4. What parent, of right feelings at least, would pardon me, if I could pursue my studies with my accustomed diligence, and would not hate my insensibility, if I had any other use for my voice than to accuse the gods for causing me to survive all my children, and to testify that divine providence pays no regard to terrestrial affairs?* If such neglect of the gods is not visible in my own person, to whom nothing can be objected but that I am still alive, it is certainly manifest in the fate of those whom cruel death has condemned to perish so undeservedly, their mother having been previously snatched from me, who, after giving birth to a second son, before she had completed her nineteenth year, died, though cut off prematurely, a happy† death. 5. By that one calamity I was so deeply afflicted, that no good fortune could ever afterwards render me completely happy; for, exhibiting every virtue that can grace a woman, she not only caused incurable grief to her husband, but, being of so girlish an age, especially when compared with my own, her loss might be counted even as that of a daughter. 6. I consoled myself, however, with my surviving children; and she, knowing, what was contrary to the order of nature, though she herself desired it, that I should be left alive, escaped the greatest of pangs in her untimely death.‡ My younger son dying, first of the two, when he had just passed his fifth year, took from me, as it were, the sight of one of my eyes. 7. I am not ostentatious of my misfortunes, nor desirous to exaggerate the causes which I have for tears; on the contrary, I wish that I

* A common mistake among the ancients, who, when misfortune fell upon the good, said that there was no divine providence, but, when the bad suffered, declared that there was; as may be seen, for example, in several passages of Livy. Quintilian, in a calm state of mind, had other thoughts of the divine superintendence; see v. 12, 19. Stat. Sylv. Carm. v. *Spalding.*

† Happy in not having seen the deaths of her children.

‡ *Præcipiti vitâ.*] This seems to be but a languid expression. May we read *præcipiti vitâ,* taking *præceps vita* in the sense of *præcipitata, immaturè abrupta?* Spalding.

had some mode of lessening them; but how can I forbear to contemplate what beauty he showed in his countenance, what sweetness in his expressions, what nascent fire in his understanding, and what substantial tokens he gave, (such as I know are scarcely credible in one so young,) not only of calm but of deep thought? Such a child, even if he had been the son of a stranger, would have won my love. 8. It was the will, too, of insidious fortune, with a view to torture me the more severely, that he should show more affection for me than for any one else, that he should prefer me to his nurses, to his grandmother who was educating him, and to all such as gain the love of children of that age. I, therefore, feel indebted to that grief which I experienced a few months before for the loss of his excellent mother, whose character is beyond all praise, for I have less reason to mourn on my own, than to rejoice on her account.

9. I then rested for my only hope and pleasure on my younger son, my little Quintilian, and he might have sufficed to console me, for he did not put forth merely flowers, like the other, but, having entered his tenth year, certain and well-formed fruits. 10. I swear by my own sufferings, by the sorrowful testimony of my feelings, by his own shade, the deity that my grief worships, that I discerned in him such excellences of mind, (not in receiving instruction only, for which, in a long course of experience, I have seen no child more remarkable, or in steady application, requiring, even at that age, as his teachers know, no compulsion, but in indications of honourable, pious, humane, and generous feelings,) that the dread of such a thunder-stroke might have been felt even from that cause, as it has been generally observed, that precocious maturity is most liable to early death, and that there reigns some malignant influence to destroy our fairest hopes, in order that our enjoyments may not be exalted beyond what is appointed to man. 11. He had also every adventitious advantage, agreeableness and clearness of voice, sweetness of tone, and a peculiar facility in sounding every letter in either language, as if he had been born to speak that only. But these were still only promising appearances; he had greater qualities, fortitude, resolution, and strength to resist pain and fear; for with what courage, with what admiration on the part of his physicians, did he endure an illness of eight months! How did he con-

sole me at the last! How, when he was losing his senses, and unable to recognize me, did he fix his thoughts in delirium only on learning! 12. O disappointment of my hopes! Did I endure, my son, to contemplate your eyes sinking in death, and your breath taking its flight? Could I, after embracing your cold and lifeless body, and receiving your last breath, breathe again the common air? Justly do I deserve the affliction which I endure, and the thoughts which affect me! 13. Have I, your parent, lost you, when just raised, by being adopted by a man* of consular dignity, to the hopes of enjoying all the honours of your father;† you, who were destined to be son-in-law to the prætor, your maternal uncle; you who, in the opinion of all, were a candidate for the highest distinctions of Attic eloquence, surviving myself only to grieve? May my sufferings at least, if not my obstinate clinging to life, make atonement to you during the rest of my existence! We in vain impute all our ills to the injustice of fortune, for no man grieves long but through his own fault.‡ 14. But I still live, and some occupation for life must be sought, and I must put faith in the learned, who have pronounced letters the only consolation in adversity.

If the present violence of my grief, however, should in time subside, so that some other thought may be admitted among so many sorrowful reflections, I shall not unreasonably crave pardon for the delay in my work; for who can wonder that my studies were interrupted, when it must rather appear wonderful that they were not relinquished entirely? 15. Should anything, then, in this part of my work, appear less finished than that which I commenced when less oppressed with affliction, let it be excused on account of the rigorousness of fortune, who, if she has not extinguished the moderate power of mind which I previously possessed, has at least succeeded in weakening it. But let me, on this very account, rouse myself to action with the greater spirit, since, though it is difficult for me to bear her oppression, it is easy for me to despise it, for

* Who he was, is unknown.

† Father by adoption.

‡ A Stoic saying; comp. v. 12, 19; 6, 3. The tenet, however, was not peculiar to the Stoic sect, but common to all the ancients, and was supported by the example of the Epicurean Atticus. See Plin. H N. ii. 7. *Spalding.*

she has left nothing further to inflict upon me, and has educed for me, out of my calamities, a security which, though unhappy, is certainly stable. 16. It is right to look favourably on my efforts, too, for this reason, that I persevere for no interest of my own, but that all my pains are devoted to the service of others, if what I write, indeed, be of any service. My work, like the acquisitions of my fortune, I, unhappy that I am, shall not leave to those for whom I designed it.

CHAPTER I.

Peroration of a speech; the objects of it; some think that it should consist wholly of recapitulation, § 1—8. Appeals to the feelings may be made by the accuser and the advocate alike, 9. What the exordium and the peroration have in common, and in what respects they differ, 10—14. The accuser excites the feelings either by showing the heinousness of the charge which he makes, or the pitiable condition of the party for whom he seeks redress, 15—20. What qualities excite feeling in favour of an accused person, 21, 22. Solicitations for pity may have great effect, but should not be long, 23—28. Modes of exciting pity, 29—36. How persons who are introduced to move pity at the conclusion of a speech, should behave themselves, 37—43. No orator must attempt to draw tears from the judges unless he be a man of great ability, 44, 45. It is the part of the peroration to dispel compassionate emotions, as well as to excite them, 46—49. Perorations sometimes of a very mild character, 50. Appeals to the feelings may be made in other parts of a speech as well as in the peroration, 51—55.

1. WHAT was to follow,* was the *peroration*, which some have termed the *completion*, and others the *conclusion*. There are two species of it, the one comprising the substance of the speech, and the other adapted to excite the feelings.

The *repetition* and summing-up *of heads*, which is called by the Greeks *'αναχεφαλαίωσις*, and by some of the Latins *enumeration*, is intended both to refresh the memory of the judge, to set the whole cause at once before his view, and to enforce such arguments in a body as had produced an insufficient effect in detail. 2. In this part of our speech,

* When the progress of the work was interrupted by the death of his son.

what we repeat ought to be repeated as briefly as possible, and we must, as is intimated by the Greek term, run over only the principal heads; for, if we dwell upon them, the result will be, not a recapitulation, but a sort of second speech. What we may think necessary to recapitulate, must be put forward with some emphasis, enlivened by suitable remarks, and varied with different figures, for nothing is more offensive than mere straightforward repetition, as if the speaker distrusted the judge's memory.* The figures which we may employ are innumerable; and Cicero affords us an excellent example in his pleading against Verres, 3. *If your father himself were your judge, what would he say when these things were proved against you?* where he subjoins an enumeration of particulars; and there is another instance, in which the same orator, in the same speech, enumerates, on invoking the gods, all the temples spoiled by Verres in his prætorship. We may also sometimes affect to doubt whether something has not escaped us, and to wonder what our opponents will reply to such or such a point, or what hope the accuser can have when our case is so fully established. 4. But what affords us the greatest gratification, is the opportunity of drawing some argument from the speech of our adversary, as when we say, *He has omitted this point in the cause;* or, *He made it his object to oppress us with odium;* or, *He had recourse to entreaty, and not without reason, when he knew so and so.* 5. But I must not go through such figures of speech, severally, lest those which I may now notice should be thought the only ones that can be used; since opportunities for varying our forms of speech spring from the nature of particular causes, from the remarks of the adversary, and even from fortuitous circumstances. Nor must we recapitulate only the points of our own case, but call also upon our opponent to reply to certain questions. 6. But this can only be done when there is time for further speaking, and when we have advanced what cannot be refuted; for to challenge the adversary on facts which make strongly for him, is to be, not his opponent, but his prompter.

7. This has been thought by most of the Attic orators, and by almost all the philosophers, who have left anything written on the art of oratory, the only legitimate kind of peroration;

* L. V. c. 52.

a tenet which the Attic orators adopted, I suppose, for this reason, that at Athens an orator was prohibited even by an officer of the court from attempting to excite the feelings. At the philosophers I am less surprised, since with them all excitement of the feelings is accounted vicious; nor is it consistent with morality, in their opinion, that the judge should be thus diverted from truth, or becoming a good man to use vicious means. Yet they will allow that to move the feelings is justifiable,* if what is true, and just, and subservient to the public good, cannot be established by any other method. 8. It is admitted however among all orators that a recapitulation may be made with advantage even in other parts of a pleading, if the cause be complex and require to be supported by numerous arguments; while nobody doubts, on the other hand, that there are many short and simple causes in which recapitulation is by no means necessary. This part of the peroration is common alike both to the prosecutor and the defendant.

9. Both of them also have recourse to the excitement of the feelings; but the defendant more rarely, the prosecutor more frequently and with greater earnestness; for the prosecutor has to rouse the judge, while the defendant's business is to soothe him. But the prosecutor at times produces tears from the pity which he expresses for the matter for which he seeks redress; and the defendant sometimes inveighs with great vehemence at the injustice of the calumny or conspiracy of which he is the object† It is therefore most convenient to divide these duties,‡ which are for the most part similarly introduced, as I said,§ in the exordium, but are in the peroration more free and full. 10. A feeling of the judge in our favour is sought but modestly at the commencement, when it is sufficient that it be just admitted, and when the whole speech is before us; but in the peroration we have to mark with what sort of feeling the judge will proceed to consider his sentence, as we have then nothing more to say, and no place is left us for which we can reserve further arguments.

* Comp. v. 14, 29.

† We must, as Spalding observes, read *calumniæ* et *conspirationis* with Rollin.

‡ Those of exciting and soothing.

§ He doubtless refers to iv. 1, 27, 28. *Spalding.*

11. It is therefore common to each party to endeavour to attract the favour of the judge towards himself, to withdraw it from his adversary, to excite the feelings and to compose them; and this very brief admonition may be given to both parties, that a pleader should bring the whole force of his cause before his view, and, when he has noticed what, among its various points, is likely, or may be made likely, to excite disapprobation or favour, dislike or pity, should dwell on those particulars by which he himself, if he were judge, would be most impressed. 12. But it is safer for me to consider the parts of each separately.

What recommends the prosecutor to the judge, I have already noticed * in the precepts which I have given for the exordium. Some particulars, however, which it is sufficient to intimate in the commencement, must be stated more fully † in the conclusion, especially if the cause be undertaken against a violent, odious, or dangerous character, or if the condemnation of the accused will be an honour to the judges, and his acquittal a disgrace to them. 13. Thus Calvus ‡ makes an admirable remark in his speech against Vatinius, *You know, judges, that bribery has been committed. and all men know that you know it.* Cicero, too, in pleading against Verres, § observes that *the disrepute which had fallen on the courts might be effaced by the condemnation of Verres;* and this is one of the conciliatory modes of address to which I have before alluded. If intimidation, too, is to be used, in order to produce a similar effect, ‖ it has a more forcible position here than in the exordium. What my opinion is on this point, I have already stated in another book. ¶ 14. It is possible also to excite jealousy, hatred, or indignation, more freely in the peroration than elsewhere; in regard to which feelings, the influence of the accused contributes to excite jealousy, ill-reputation hatred, and disrespect for the judge, (if the accused be contumacious, arrogant, or full of assurance,) indignation, the judge being often influenced, not only by an act or word, but by look, air, or manner.

* See IV. 1, 5—27.
† V. 13, 56.
‡ I. 6, 42.
§ Act. i. 15.
‖ Fear itself makes the judge unwilling to be unjust to the accuser
¶ IV. 1, 20, 21.

The accuser* of Cossutianus Capito was thought, when I was young, to have made a very happy remark, in Greek,† indeed, but to this effect, *You are ashamed to fear even Cæsar.* 15. But the most effective way for the accuser to excite the feelings of the judge, is to make that which he lays to the charge of the accused appear the most *atrocious* act possible, or, if the subject allow, the most *deplorable.* Atrocity is made to appear from such considerations as these, *What has been done, by whom, against whom, with what feeling, at what time, in what place, in what manner;* all which have infinite ramifications. 16. We complain that somebody has been beaten; we must first speak of the act; and then state whether the sufferer was *an old man,* or *a youth,* or *a magistrate,* or *a man of high character,* or *one who has deserved well of his country;* also whether he was struck by *some vile contemptible fellow;* or, on the other hand, by *some tyrannical person,* or *by some one from whom he ought least of all to have received such treatment;* also whether he was struck, as it might be, *on a solemn festival,* or *when prosecutions for similar offences were being rigorously conducted,* or *at a time when the government was unsettled,* or, as to place, *in a theatre, in a temple, in a public assembly,* for under such circumstances the offence is aggravated; 17. also whether it can be proved that he was not struck by *mistake,* or *in a sudden fit of passion,* or, if in a passion, *with great injustice,* when, perhaps, he was *taking the part of his father,* or *had made some reply‡ to the aggressor,* or *was standing for office in opposition to him;* and whether *the aggressor would have proceeded to greater violence than he actually committed.* But the *manner* contributes most to the heinousness of the act, if he struck the person *violently,* or *insultingly;* as Demosthenes excites odium against Meidias by alluding to the part of his body which was struck, and the look and mien of the striker. 18. A man has been killed; we must consider whether it was with a *sword,* or *fire,* or

* Who the accuser was we do not know. It appears from Tacitus, Ann. xiii. 33, that Cossutianus Capito was condemned for extortion in his province of Cilicia. See also Juv. viii. 92.

† It had become customary to plead occasionally in Greek since the time of Molo the tutor of Cicero: Val. Max. ii. 2, 3.

‡ *Quòd respondisset.*] See v. 7, 14; iii. 5, 15. The injustice, which the aggressor committed, had not been borne by the young man in silence. Compare Terent. Phorm. Prol. 19. *Spalding.*

poison; with *one wound* or with *several;* whether *suddenly*, or whether he was *made to languish in tortures;* all which considerations have great effect in this way.*

The accuser, also, often attempts to excite pity, as when he bewails the sad fate of him whose cause he is pleading, or the destitution of his children or parents. 19. He may also move the judges by a representation of the future, showing what will be the consequences to those who complain of violence and injustice, unless their cause be avenged; that they must *flee from their country, sacrifice their property, or endure everything that their enemies may be disposed to inflict on them.* 20. But it is more frequently the part of the accuser to guard the feelings of the judge against that pity which the accused would seek to excite, and to urge him to give judgment with boldness. In doing so, he may also anticipate what he thinks his opponent likely to say or do; for this course makes the judges more cautious in adhering to the sacredness of their oath, and diminishes the influence of those who have to reply, since what has been once stated by the accuser, will, if urged in favour of the accused, be no longer new; thus Servius Sulpicius, in pleading against Aufidia,† admonishes the judges that *the danger to the witnesses from those persons‡ was not to be brought against him.* It is also previously intimated by Æschines§ what sort of defence Demosthenes was likely to use. Judges may sometimes be instructed, too, as to answers which they should make to those who may solicit them in favour of the defendant; an instruction which is a species of recapitulation.

21. As to a party on trial, his *dignity*, or *manly pursuits*, or *wounds received in war*, or *nobility of birth*, or *the services of his ancestors*, may be subjects of recommendation to him, This kind of considerations Cicero and Asinius Pollio have urged even emulously, Cicero‖ for Scaurus the father, and Pollio for Scaurus the son. 22. The *cause*, also, which has brought him

* That is, in heightening the heinousness of the charge. See sect. 15.

† See iv. 2, 106.

‡ *Ab ipsis.*] Who they were, we cannot, from the few fragments which we possess of the speech, form any conjecture. *Spalding.*

§ See Reisk. Orat. iii. 597, 608; Steph. lxxxiii. 28—84, 23; 6 11—623; St. lxxxiv. 33—86, 30. See also Quint. iii. 6, 3; vii. 1, 2 *Spalding.*

‖ See iv. 1, 69. Val. Max. viii. 1, 10

into danger, may be pleaded in his favour, if he appear, for example, to have incurred enmity for some honourable act, and his goodness, humanity, pity, may especially be eulogized; for a person seems justly to solicit* from the judge that which he himself has shown to others. In this part of a speech,† too, allusions may be made to *the public good*, to *the honour of the judges*, to *precedent*, to *regard for posterity*. 23. But that which produces the most powerful impression is pity, which not only forces the judge to change his opinions, but to manifest the feelings in his breast even by tears. Pity will be excited by dwelling either on that which the accused has suffered, or on that which he is actually suffering, or on that which awaits him if he be condemned; representations which have double force, when we show from what condition he has fallen, and into what condition he is in danger of falling. 24. To these considerations age and sex may add weight, as well as objects of affection, I mean children, parents, and other relatives; and all these matters may be treated in various ways. Sometimes also the advocate numbers himself among his client's connexions, as Cicero in his speech for Milo :‡ *O unhappy that I am! O unfortunate that thou art! Could you, Milo, by means of those who are this day your judges, recall me into my country, and cannot I, by means of the same judges, retain you in yours?* 25. This is a very good resource, if, as was then the case, entreaty is unsuited to the party who is accused; for who would endure to hear Milo supplicating for his life, when he acknowledged that he had killed a nobleman because he deserved to be killed? Cicero, therefore, sought to gain Milo§ the favour of the judges for his magnanimity, and took upon himself the part of suppliant for him.

In this part of a speech *prosopopeiæ* are extremely effective, that is, fictitious addresses delivered in another person's character, such as are suitable either to a prosecutor or

* The text has *Justè enim tunc petere*, but Spalding justly observes that *tunc* is useless, and proposes to read *Justissimè enim petere*.

† See iv. 1, 7. He means that such allusions may be made in the peroration as well as in the exordium.

‡ C. 37.

§ I read *illi*, instead of *ille*, with Spalding.

defendant.* Even mute objects† may touch the feelings, either when we speak to them ourselves, or represent them as speaking. 26. But the feelings are very strongly moved by the personification of characters; for the judge seems not to be listening to an orator lamenting the sufferings of others, but to hear with his own ears the expressions and tones of the unfortunate suppliants themselves, whose presence, even without speech, would be sufficient to call forth tears; and as their pleadings would excite greater pity if they themselves uttered them, so they are in some degree more effective when they are spoken apparently by their own mouth in a personification; as with actors on the stage, the same voice and the same pronunciation have greater power to excite the feelings when accompanied with a mask representing the character. 27. Cicero, accordingly, though he puts no entreaties into the mouth of Milo, but rather commends him to favour for his firmness of mind, has yet attributed to him words and lamentations not unworthy of a man of spirit; *O labours, undertaken by me in vain! O deceitful hopes! O thoughts, cherished by me to no purpose!*

Yet our supplications for pity should not be long; as it is observed, not without reason, that *nothing dries sooner than tears.* 28. For, since time lessens even natural sorrows, the representation of sorrow, which we produce in a speech, must lose its effect still sooner; and, if we are prolix in it, the hearer, wearied with tears, will recover his tranquillity, and return from the emotion which had surprised him to the exercise of his reason. 29. Let us not allow the impressions that we make, therefore, to cool, but, when we have raised the feelings of our audience to the utmost, let us quit the subject, and not expect that any person will long bewail the misfortunes

* *Quales litigatorem docent vel patronum.*] All commentators have been dissatisfied with these words. Spalding very properly asks, "What kinds of *prosopopeiæ* are suitable to a *patronus?* Surely all kinds, if he be but a skilful pleader." Gedoyn renders the words, *tels qu' ils conviennent à l'avocat ou à sa partie,* taking *litigator* in the sense of "client." I have thought it better to understand it in that of "accuser" or "prosecutor." Rollin proposes to substitute for it *litis actorem,* in that sense, but Burmann disapproves.

† *Mutæ tamen res.*] In place of *tamen* some manuscripts have *tantum.*

of another. Not only in other parts of our speech, accordingly, but most of all in this part, our eloquence ought gradually to rise; for whatever does not add to that which has been said, seems even to take away from it, and the feeling which begins to subside soon passes away.

30. We may excite tears, however, not only by words, but by acts; and hence it become a practice to exhibit persons on their trial in a squalid and pitiful garb, accompanied with their children and parents; hence, too, we see blood-stained swords produced by accusers, with fractured bones extracted from wounds, and garments spotted with blood; we behold wounds unbound, and scourged backs exposed to view. 31. The effect of such exhibitions is generally very strong, so that they fix the attention of the spectators on the act as if it were committed before their eyes. The blood-stained toga of Julius Cæsar, when exhibited in the forum, excited the populace of Rome almost to madness. It was known that he was killed; his body was even stretched on the bier; yet his robe, drenched in blood, excited such a vivid idea of the crime, that Cæsar seemed not to have been assassinated, but to be subjected to assassination at that very moment. 32. But I would not for that reason approve of a device of which I have read, and which I have myself seen adopted, a representation, displayed in a painting or on a curtain, of the act at the atrocity of which the judge was to be shocked. For how conscious must a pleader be of his inefficiency, who thinks that a dumb picture will speak better for him than his own words? 33. But a humble garb, and wretched appearance, on the part as well of the accused as of his relatives, has, I know, been of much effect; and I am aware that entreaties have contributed greatly to save accused persons from death. To implore mercy of the judges, therefore, by the defendant's *dearest objects of affection*, (that is to say, if he has children, wife, or parents,) will be of great advantage, as well as to invoke the gods, since such invocation seems to proceed from a clear conscience. 34. To fall prostrate, also, and embrace the knees of the judge, may be allowable at times, unless the character of the accused, and his past life and station, dissuade him from such humiliation; for there are some deeds that ought to be defended with the same boldness with which they were committed. But regard is to

be had to the defendant's dignity, with such caution that an offensive confidence may not appear in him.

35. Among all arguments for a client, the most potent, in former times, was that by means of which Cicero seems chiefly to have saved Lucius Muræna from the eminent men who were his accusers, when he persuaded them that nothing was more advantageous for the state of things at that period than that Muræna *should enter on his consulship the day before the Kalends of January*.* But this kind of argument is wholly set aside in our days, as everything depends on the care and protection of our sovereign, and cannot be endangered by the issue of any single cause.

36. I have spoken of prosecutors and defendants, because it is on their trials that the pathetic is chiefly employed. But private causes† also admit both kinds of perorations, that which consists in a recapitulation of proofs, and that which depends on the excitement of the feelings, the latter having place whenever the accused party is in danger either as to station or as to character; for to attempt such tragic pleadings in trifling causes would be like trying to adjust the mask and buskins of Hercules on an infant.

37. Nor is it improper for me to intimate, that much of the success of a peroration depends, in my opinion, on the manner in which the defendant, who is presented before the judge, accommodates his demeanour to that of him who pleads in his favour; for *ignorance*, *rusticity*, *stiffness*, and *vulgarity* in a client sometimes damp a pleader's efforts; and against such untowardness he should take diligent precaution. 38. I have seen the behaviour of clients quite at variance with the language of their advocate, showing no concern in their countenance, laughing without reason, and, by some act or look, making even others laugh, especially when anything was delivered at all theatrically. 39. On one occasion, an advocate led over a girl, who was said to be the sister of the adverse party, (for it was about that point that the controversy

* Cicero pro Flacc. c. 39, says that it was by this argument that he saved Muræna. Quintilian, says Spalding, seems to intimate that that consideration had more effect on the judges than Cicero's eloquence.

† In private causes there was properly only *petitor* and *unde petitur*. In public causes, prosecutor and defendant. *Spalding.*

was,) to the opposite benches,* as if intending to leave her in the arms of her brother; but the brother, previously instructed by me, had gone off; and the advocate, although an eloquent man at other times, was struck dumb by his unexpected disappearance, and, with his ardour cooled, took his little girl back again. 40. Another advocate, pleading for a woman who was on her trial, thought it would have a great effect to exhibit the likeness of her deceased husband; but the image excited little else but laughter; for the persons whose business it was to produce it, being ignorant what a *peroration* meant, displayed it to view whenever the advocate looked towards them, and, when it was brought still more into sight at the conclusion, it destroyed the effect of all his previous eloquence by its ugliness, being a mere cast from an old man's dead body.† 41. It is well known, too, what happened to Glycon,‡ surnamed Spiridion: A little boy, whom he brought into court, and asked *Why he was weeping*, replied, "That he had had his ears pulled by his tutor."§ But nothing is better adapted to show the dangers attendant on perorations, than the story of Cicero about the Cepasii.‖ 42. Yet all such mishaps are easily remedied by those who can alter the fashion of their speech; but those who cannot vary from what they have composed, are either struck dumb at such occurrences, or, as is frequently the case, say what is not true; for hence are such impertinences as these: *He is raising his supplicating hands towards your knees*, or, *He is locked, unhappy man, in the embraces of his children*, or, *See, he recalls my attention*, &c.; though the client does no single thing of all that his advocate attributes to him. 43. These absurdities come from the schools, in which we give play to our imagination freely and with impu-

* The defendant was on the right hand seats; the accuser on the left. The advocate, therefore, transferred the girl from his own seat to that of his adversary, with a view to produce a moving scene. *Turnebus.*

† That such casts were taken among the ancients, appears, as Gesner remarks, from what Pliny says of Lysistratus, H. N. xxxv. 12.

‡ A Greek rhetorician, mentioned several times with respect by Seneca the father; for instance, p. 151, ed. Bip. *Spalding.*

§ Nicholas Faber, on the passage of Seneca just quoted, supposes that the boy had really been beaten, in order that he might appear in the court in tears, but that it was intended he should be silent.

‖ See iv. 2, 19.

nity, because whatever we wish is supposed to be done; but reality does not allow of such suppositions, and Cassius Severus made a most happy retort to a young orator who said, "Why look you so sternly on me, Severus?" "I did not, I assure you," replied Cassius, "but you had written those words, I suppose, in your notes, and so here is a look for you," when he threw on him as terrible a glance as he could possibly assume.

44. The student ought above all things to be admonished, also, that an orator should not attempt to excite tears, unless he be endowed with extraordinary genius; for as the effect on the feelings, if he succeeds, is extremely powerful, so, if he is unsuccessful, the result is vapidity; and a middling pleader had better leave the pathos to the quiet meditations of the judges; 45. for the look, tone, and even the very face, of a defendant called to stand before the judges, are a laughing-stock to such persons as they do not move. Let a pleader, therefore, in such a case, carefully measure and contemplate his strength, and consider how difficult a task he will have to undertake. In the result there will be no medium; he will either provoke tears or laughter.

46. But the business of a peroration is not only to excite feelings of pity, but also to deaden them, either by a set speech, which may recall the judges, when shaken by compassion, to considerations of justice, or by some jocose remark, as, *Give the child a cake, that he may leave off crying;* or, as a pleader said to his corpulent client, whose opponent, a mere child, had been carried round among the judges by *his* advocate, *What shall I do? I cannot carry you.* 47. But such pleasantries must have nothing of buffoonery; and I cannot praise the orator,* though he was among the most eminent of his time, who, when some children were brought in at the peroration by the opposite party, threw some playthings† among them, for which they began to scramble; for the children's insensibility to ill that threatened them might of itself excite compassion. 48. Nor can I commend him, who, when a blood-stained sword was produced by his adversary, which he offered as a proof that a man had been killed, suddenly took flight, as

* Who he was, I find nothing to assist me in conjecturing. The story, I believe, is nowhere else told.

† *Talos.*] Bones from the pastern of cloven-footed animals, with which boys were accustomed to play. *Turnebus.*

if terrified, from his seat, and looking out from the crowd, with his head half covered with his robe, asked *whether the man with the sword was yet gone*; for he raised a laugh, indeed, but made himself at the same time ridiculous. 49. The effect of such acting is to be dispelled by the calm power of eloquence; and Cicero gives us excellent examples, who, in his oration for Rabirius, attacks with great force the production of the likeness of Saturninus,* and, in his speech for Varenus,† rallies with much wit the young man whose wound was unbound from time to time during the trial.

50. There are also perorations of a milder sort, in which we seek to pacify an adversary, if his character, for instance, be such that respect is due to him, or in which we give him some friendly admonition, and exhort him to concord; a kind of peroration that was admirably managed by Passienus,‡ when he pleaded the cause of his wife Domitia, to recover a sum of money, against her brother Ænobarbus, for, after he had enlarged on their relationship, he added some remarks on their fortune, of which both had abundance, saying, *There is nothing of which you have less need than that about which you are contending.*

51. But all these addresses to the feelings, though they are thought by some to have a place only in the exordium and the peroration, in which indeed they are most frequently introduced, are admissible also in other parts, but more sparingly, as it is from them that the decision of the cause must be chiefly evolved;§ but in the peroration, if anywhere, we may call forth all the resources of eloquence; 52. for if we have treated the other parts successfully, we are secure of the attention of the judges at the conclusion; where, having passed the rocks and shallows on our voyage, we may expand our

* Titus Labienus, the accuser of Rabirius, had exhibited an image of Lucius Saturninus, killed many years before, to excite the feelings. See Cic. pro Rabir. c. 9.

† See v. 13, 28.

‡ The husband of Agrippina, and step-father of Nero. He had been previously married to Domitia. See c. 3, sect. 74; x. 1, 24.

§ *Ut quum ex iis plurima sit res eruenda.*] Ex aliis istis partibus——videlicet *narrandi* et *probandi*——veritas rei maximè est eruenda, nec patiuntur propterea magnam affectuum copiam et diuturnitatem; conf. xii. 9, 3. *Plurima res* seems to be for "plurimum rei, maxima pars rei." *Spalding.*

sails in safety; and, as amplification forms the greatest part of a peroration, we may use language and thoughts of the greatest magnificence and elegance. It is then that we may shake the theatre, when we come to that with which the old tragedies and comedies were concluded, *Plaudite*, "Give us your applause."

53. But in other parts we must work upon the feelings, as occasion for working on any of them may present itself, for matters of a horrible or lamentable nature should never be related without exciting in the mind of the judges a feeling in conformity with them; and when we discuss the quality of any act, a remark addressed to the feelings may be aptly subjoined to the proof of each particular point. 54. And when we plead a complicated cause, consisting, it may be said, of several causes, we shall be under the necessity of using, as it were, several perorations; as Cicero has done in his pleading against Verres; for he has lamented over Philodamus,* over the captains of the vessels,† over the tortures of the Roman citizens,‡ and over several other of that prætor's victims. 55. Some call these μερικοὶ ἐπίλογοι, by which they mean *parts of a divided peroration;* but to me they seem not so much parts as species of perorations; for the very terms ἐπίλογος and *peroratio* show, clearly enough, that the conclusion of a speech is implied.

CHAPTER II.

Necessity of studying how to work on the minds of the judges, § 1, 2. This department of oratory requires great ability, 3—7. Of πάθος and ἦθος, 8—24. If we would move others, we must feel moved ourselves, 25—28. Of presenting images to the imagination of our hearers, 29—35. Pupils should be exercised in this in the schools, 36.

1. But though the peroration is a principal part of judicial causes, and is chiefly concerned with the feelings, and though I have of necessity, therefore, said something of the feelings

* In Verr. i. 30.
† V. 45, 46.
‡ V. 53, 68.

in treating of it, yet I could not bring the whole of that subject under one head, nor indeed should I have been justified in doing so. A duty of the orator, accordingly, still remains to be considered, which is of the greatest efficacy in securing his success, and is of far more difficulty than any of those already noticed, I mean that of influencing the minds of the judges, and of moulding and transforming them, as it were, to that disposition which we wish them to assume. 2. With regard to this point, I have touched on a few particulars, such as the subject called forth, but so as rather to show what ought to be done than how we may be able to effect it. The nature of the whole subject must now be considered more deeply.

Throughout the whole of any cause, as I remarked,* there is room for addresses to the feelings. The nature of the feelings is varied, and not to be treated cursorily; nor does the whole art of oratory present any subject that requires greater study. 3. As to other matters, moderate and limited powers of mind, if they be but aided by learning and practice, may invigorate them, and bring them to some fruit; certainly there are, and always have been, no small number of pleaders, who could find out, with sufficient skill, whatever would be of service to establish proofs; and such men I do not despise, though I consider that their ability extends no farther than to the communication of instruction to the judge; and, to say what I think, I look upon them as fit only to explain causes to eloquent pleaders; but such as can seize the attention of the judge, and lead him to whatever frame of mind he desires, forcing him to weep or feel angry as their words influence him,† are but rarely to be found. 4. But it is this power that is supreme in causes; it is this that makes eloquence effective.‡ As to arguments, they generally arise out of the cause, and are more numerous on the side that has the greater justice; so that he who gains his cause by force of arguments, will only have the satisfaction of knowing that his advocate

* C. 1, sect. 51.

† *Quo dicto flendum et irascendum esset.*] *Dicto*, as Spalding observes, cannot be correct. He would either alter it into *dicente*, or consider the whole phrase as a gloss. I should prefer the alteration.

‡ The text is *hæc eloquentiam regunt*, but can hardly be sound, as the singular *hoc* immediately precedes. The state of the text in many parts of this chapter is very unsatisfactory.

did not fail him. 5. But when violence is to be offered to the minds of the judges, and their thoughts are to be drawn away from the contemplation of truth, then it is that the peculiar duty of the orator is required. This the contending parties cannot teach; this cannot be put into written instructions. Proofs in our favour, it is true, may make the judge think our cause the better, but impressions on his feelings make him wish it to be the better, and what he wishes he also believes. 6. For when judges begin to feel indignant, to favour, to hate, to pity, they fancy that their own cause is concerned; and, as lovers are not competent judges of beauty, because passion overpowers the sense of sight, so a judge, when led away by his feelings, loses the faculty of discerning truth; he is hurried along as it were by a flood, and yields to the force of a torrent. 7. What effect arguments and witnesses have produced, it is only the final decision that proves; but the judge, when his feelings are touched by the orator, shows, while he is still sitting and hearing, what his inclination is. When the tear, which is the great object in most perorations, swells forth, is not the sentence plainly pronounced? To this end, then, let the orator direct his efforts; this is his work, this his labour;* without this everything else is bare and meagre, weak and unattractive; so true is it, that the life and soul of eloquence is shown in the effect produced on the feelings.

8. Of feelings, as we are taught by the old writers, there are two kinds; one, which the Greeks included under the term *πάθος*, which we translate rightly and literally by the word "passion;" the other, to which they give the appellation *ἦθος*, for which, as I consider, the Roman language has no equivalent term; it is rendered, however, by *mores*, "manners;" whence that part of philosophy, which the Greeks call *ἠθική*, is called *moralis*, "moral." 9. But when I consider the nature of the thing, it appears to me that it is not so much *mores* in general that is meant, as a certain *proprietas morum*, or "propriety of manners;" for under the word *mores* is comprehended every habitude of the mind. The more cautious writers, therefore, have chosen rather to express the sense than to interpret the words, and have designated the one class of feelings as the more *violent*, the other as the more *gentle* and *calm*;

* *Hoc opus, hic labor est.* Virg. Æn vi. 128.

under πάθος they have included the stronger passions, under ἦθος the gentler, saying that the former are adapted to command, the latter to persuade, the former to disturb, the latter to conciliate. 10. Some of the very learned* add that the effect of the πάθος is but transitory; but while I admit that this is more generally the case, I consider that there are some subjects which require a permanent strain of πάθος to run through the whole of them. Addresses however to the milder feelings require not less art and practice, though they do not call for so much energy and vehemence; and they enter into the majority of causes, or rather, in some sense,† into all; 11. for as nothing is treated by the orator that may not be referred either to πάθος or ἦθος,‡ whatever is said concerning *honour* or *advantage*, concerning things *that may be done* or *may not be* done, is very properly included under the term *ethic*. Some think that *commendation* and *palliation* are the peculiar duties of the ἦθος, and I do not deny that they fall under that head, but I do not allow that they are its only object. 12. I would also add that πάθος and ἦθος are sometimes of the same nature, the one in a greater and the other in a less degree, as *love*, for instance, will be πάθος, and *friendship* ἦθος, and sometimes of a different nature, as πάθος, in a peroration, will excite the judges, and ἦθος soothe them.

But I must develope more precisely the force of the term ἦθος, as it seems not to be sufficiently intimated by the word itself. 13. The ἦθος, of which we form a conception, and which we desire to find in speakers, is recommended, above all, by goodness, being not only mild and placid, but for the most part pleasing and polite, and amiable and attractive to the hearers: and the greatest merit in the expression of it, is, that it should seem to flow from the nature of the things and

* *Adjiciunt quidam peritorum πάθος temporale esse.*] The strangeness of the word *peritorum* induces Spalding to suspect that the words stood originally thus: *Adjiciunt quidam perpetuum ἦθος, πάθος temporale esse.*

† *Secundum quendam intellectum.*] This is the same as our French phrase *en un sens*. Capperonier.

‡ *Nam quum nisi ex illo et hoc loco nihil ab oratore tractetur.*] I interpret these words according to the notion of Capperonier. Whatever cannot be placed under the head of πάθος, may be placed under that of ἦθος. Spalding, with Regius, would refer *illo* and *hoc* to the following words, *honesta* and *utilia*, but this mode is so forced that I cannot concur with him.

persons with which we are concerned, so that the moral character of the speaker may clearly appear, and be recognized as it were, in his discourse. 14. This kind of ἦθος ought especially to prevail between persons closely connected, as often as they endure anything from each other, or grant pardon, or satisfaction, or offer admonition, all which should be free from anger, or dislike. But the ἦθος of a father towards his son, of a guardian towards his ward, of a husband towards his wife, (all of whom manifest affection for those with whom they are offended, and throw blame upon them by no other means than showing that they love them,)* is very different from that which is shown by an old man towards a young one from whom he has received an insult, or from that of a man of rank towards an inferior who has been disrespectful to him, (for the man of rank may only be provoked, the old man must also be concerned.) 15. Of the same character, though less affecting to the feelings, are *solicitations for forgiveness*, or *apologies for the amours of youth*. Sometimes, too, a little gentle raillery of another person's heat† may have its source in the ἦθος, though it does not proceed from such a source only. But what more peculiarly belongs to it is *simulation of some virtue*, *of making satisfaction to some one*, and εἰρωνεία *in asking questions*, which means something different from that which it expresses. 16. Hence also springs that stronger appeal to the feelings, adapted to draw the dislike of the judge on an overbearing adversary, when, by feigning submission to him, we imply a quiet censure on his presumption; for the very fact that we yield to him, proves him to be arrogant and insupportable; and orators who are fond of invective, or affect liberty of speech, are not aware how much more effective it is thus to throw odium on an opponent than to reproach him, since that kind of treatment renders him disliked, while reproach would bring dislike on ourselves. 17. The feeling arising from our love and regard for our friends and relatives is, we may say, of an intermediate character, being stronger than ἦθος and weaker than πάθος.

It is not without significance, too, that we call those exer-

* While the objects of their love make no proper return for it.—A little below, we must for *illic*, as Spalding observes, read *ille*.

† *Alieni caloris.*] The heat which others exhibit in blaming or accusing those whom we have undertaken to defend *Capperonier*.

cises of the schools ἤθη, in which we are accustomed to represent the characters of the rustic, the superstitious, the avaricious, the timid, agreeably to the thesis proposed for discussion. For as ἤθη are manners, we, in imitating manners, adapt our speech to them.

18. All this species of eloquence, however, requires the speaker to be a man of good character, and of pleasing manners. The virtues which he ought to praise, if possible, in his client, he should possess, or be thought to possess, himself. Thus he will be a great support to the causes that he undertakes, to which he will bring credit by his own excellent qualities. But he who, while he speaks, is thought a bad man, must certainly speak ineffectively; for he will not be thought to speak sincerely; if he did, his ἦθος, or character, would appear. 19. With a view to credibility, accordingly, the style of speaking in this kind of oratory should be calm and mild; it requires,* at least, nothing of vehemence, elevation, or sublimity; to speak with propriety, in a pleasing manner, and an air of probability, is sufficient for it; and the middling sort of eloquence is therefore most suitable.

20. What the Greeks call πάθος, and we, very properly, *affectus*, is quite different from that which is referred to the ἦθος: and that I may mark, as exactly as I can,† the diversity between them, I would say that the one is similar to comedy, the other to tragedy. This kind of eloquence is almost wholly engaged in exciting anger, hatred, fear, envy, or pity; and from what sources its topics are to be drawn is manifest to all, and has been mentioned by me‡ in speaking of the exordium and peroration. 21. Fear, however, I wish to be understood in two senses, that which we feel ourselves, and that which we cause to others; and I would observe that there are two sorts of *invidia*, "dislike," one that makes *invidum*, "envious," and another that makes *invidiosum*, "disliked."§ The first is applied to persons, the second to things; and it is with this that eloquence has the greater difficulty; for though some

* All the texts have *desideret*, but we must read, as Rollin says, *desiderat*.

† *Proximè*.] That is *proximè ad veritatem, quàm verissimè fieri potest*. Spalding.

‡ B. iv. c. 1, and b. vi. c. 1. *Spalding*.

§ *Altera invidum, altera invidiosum facit*.] "Il y a deux sortes de haine, celle que l'on ressent et celle que l'on excite." Gedoyn.

things are detestable in themselves, as *parricide, murder, poisoning*, others require to be made to appear so. 22. Such representation is made, either by showing that what we have suffered is more grievous than evils ordinarily considered great; as in these lines of Virgil,*

> *O felix una ante alias Priameïa virgo,*
> *Hostilem ad tumulum Trojæ sub mœnibus altis*
> *Jussa mori!*
>
> O happy thou above all other maids,
> Daughter of Priam, doom'd to die before
> Thy enemy's tomb, beneath the lofty walls
> Of Troy!

(for how wretched was the lot of Andromache, if that of Polyxena, compared with hers, was happy!) 23. or by magnifying some injury that we have received, so as to make even injuries that are far less appear intolerable; as, *If you had struck me, you would have been inexcusable; but you wounded me.* But these points I shall consider with more attention, when I come to speak of amplification. In the mean time, I shall content myself with observing that the object of the pathetic is not only that those things may appear grievous and lamentable, which in reality are so, but also that those which are generally regarded as inconsiderable, may seem intolerable; as when we say that there is more injury in a verbal insult than in a blow, or that there is more punishment in dishonour than in death. 24. For such is the power of eloquence, that it not only impels the judge to that to which he is led by the nature of the matter before him, but excites feelings which are not suggested by it, or strengthens such as are suggested. This is what the Greeks call δείνωσις, language adding force to things unbecoming, cruel, detestable; in which excellence, more than in any other, Demosthenes showed his extraordinary power.

25. If I thought it sufficient merely to adhere to the precepts that have been delivered, I should do enough for this part of my work by omitting nothing that I have read or learned, that is at all reasonable, on the subject; but it is my intention to open the deepest recesses of the topic on which we have entered, and to set forth what I have acquired, not from any teacher, but from my own experience, and under the

* Æn. iii. 321.

guidance of nature herself. 26. The chief requisite, then, for moving the feelings of others, is, as far as I can judge, that we ourselves be moved; for the assumption of grief, and anger, and indignation, will be often ridiculous, if we adapt merely our words and looks, and not our minds, to those passions. For what else is the reason that mourners, when their grief is fresh at least, are heard to utter exclamations of the greatest expressiveness, and that anger sometimes produces eloquence even in the ignorant, but that there are strong sensations in them, and sincerity of feeling? 27. In delivering, therefore, whatever we wish to appear like truth, let us assimilate ourselves to the feelings of those who are truly affected, and let our language proceed from such a temper of mind as we would wish to excite in the judge. Will he grieve, let me ask, who shall hear me, that speak for the purpose of moving him, expressing myself without concern? Will he be angry, if the orator who seeks to excite him to anger, and to force him to it, shows no like feeling? Will he shed tears at the words of one who pleads with dry eyes? 28. Such results are impossible. We are not burned without fire, or wet without moisture; nor does one thing give to another the colour which it has not itself. Our first object must be, therefore, that what we wish to impress the judge may impress ourselves, and that we may be touched ourselves before we begin to touch others.

29. But by what means, it may be asked, shall we be affected, since our feelings are not in our own power? I will attempt to say something also on this point. What the Greeks call *φαντασίαι* we call *visiones;* images by which the representations of absent objects are so distinctly represented to the mind, that we seem to see them with our eyes, and to have them before us. 30. Whoever shall best conceive such images, will have the greatest power in moving the feelings. A man of such lively imagination some call *εὐφαντασίωτος*, being one who can vividly represent to himself things, voices, actions, with the exactness of reality; and this faculty may readily be acquired by ourselves if we desire it. When, for example, while the mind is unoccupied, and we are indulging in chimerical hopes, and dreams, as of men awake, the images of which I am speaking beset us so closely, that we seem to be on a journey, on a voyage, in a battle, to be haranguing

assemblies of people, to dispose of wealth which we do not possess, and not to be thinking but acting, shall we not turn this lawless power of our minds to our advantage? 31. I make a complaint that a man has been murdered; shall I not bring before my eyes everything that is likely to have happened when the murder occurred? Shall not the assassin suddenly sally forth? Shall not the other tremble, cry out, supplicate, or flee? Shall I not behold the one striking, the other falling? Shall not the blood, and paleness, and last gasp of the expiring victim, present itself fully to my mental view? 32. Hence will result that ἐνάργεια, which is called by Cicero *illustration* and *evidentness*, which seems not so much to narrate as to exhibit; and our feelings will be moved not less strongly than if we were actually present at the affairs of which we are speaking. Are not the following descriptions to be numbered among representations of this nature?

*Excussi manibus radii, revolutaque pensa:**
The shuttle from her hands was shaken forth,
And all the web unravelled.

33. ——*Levique patens in pectore vulnus:*†
The gaping wound
In his smooth breast.

And that of the horse at the funeral of Pallas,

——*positis insignibus*——‡
His trappings laid aside——.

Has not the same poet also conceived with the deepest feeling the idea of a man's dying moments, when he says

——*Et dulces moriens reminiscitur Argos,*§
And on his dearest Argos thinks in death!

34. Where there is occasion for moving compassion, too, we must endeavour to believe, and to feel convinced, that the evils of which we complain have actually happened to ourselves. We must imagine ourselves to be those very persons for whom we lament as having suffered grievous, undeserved, and pitiable treatment; we must not plead their cause as that of another,

* Virg. Æn. ix. 476.
† Æn. xi. 40.
‡ Æn. xi. 89.
§ Æn. x. 781.

but must endeavour to feel for a time their sufferings; and thus we shall say for them what we should in similar circumstances say for ourselves. 35. I have often seen actors, both in tragedy and comedy, when they laid aside their mask after going through some distressing scene, quit the theatre weeping; and if the mere delivery of what is written by another can add such force to fictitious feelings, what effect ought we to produce, when we should feel what we express, and may be moved at the condition of those who are on their trial?

36. In the schools, also, it would be proper for learners to feel moved with the subjects on which they speak, and imagine that they are real, especially as we discuss matters there more frequently as parties concerned than as advocates. We assume the character of an orphan, of a person that has been shipwrecked, or one that is in danger of losing his life; but to what purpose is it to assume their characters, if we do not adopt their feelings? This art I thought should not be concealed from the reader, the art by which I myself (whatever is or was my real power) conceive that I have attained at least some reputation for ability; and I have often been so affected, that not only tears, but paleness, and sorrow, similar to real sorrow, have betrayed my emotions

CHAPTER III.

Of the power of exciting laughter in an audience, § 1. There was little of it in Demosthenes; perhaps a superabundance of it in Cicero, 2—5. Causes of laughter not sufficiently explained, 6, 7. Is of great effect, 8—10. Depends far more on nature and favourable circumstances than on art, 11—13. No instructions given in exciting laughter, 14—16. Various names for jocularity or wit, 17—21. Depends partly on matter, partly on words; subjects of it, 22—24. Laughter may be excited by some act, or look, or gesture, 25—27. What is becoming to the orator, 28—32. What to be avoided by him, 33—35. Topics for jesting, and modes of it, 36—46. Ambiguity in words, 47—56. The best jests are taken from things, not from words; of similarity, 57—62. Of dissimilarity, 63, 64. From all forms of argument arise occasions for jesting, 65, 66. Jests in the form of tropes and figures, 67—70. Of jocular refutation, 71—78. Of eluding a charge; of pretended confession, 79—81. Some kinds of jests are beneath an orator, 82, 83. Of deceiving expectation, 84—87. Of jocular imitation, 88. Of attributing thoughts to ourselves or others; and of irony, 89—92. The least offensive jokes are the best, 93—95. Quotations from poets, proverbs, and anecdotes, 96—98. Apparent absurdities, 99, 100. Domitius Marsus confounds politeness with humour, 101—107. His distinctions, 108—112.

1. VERY different from this is the talent which, by exciting laughter in the judge, dispels melancholy affections, diverting his mind from too intense application to the subject before it, recruiting at times its powers, and reviving it after disgust and fatigue.

2. How difficult it is to succeed in that way, even the two greatest of all orators, the one the prince of Greek and the other of Latin eloquence, afford us sufficient proof. Most think that the faculty was altogether wanting to Demosthenes,* and moderation in the management of it to Cicero. Demosthenes, certainly, cannot be thought to have been unwilling to cultivate it, as his jests, though very few, and by no means correspondent to his other excellences, plainly show that jocu-

* Gesner observes that Cicero, Orat. c. 26, in noticing the general opinion that Demosthenes wanted humour, says that he had much *urbanitas;* and that Plutarch in his Life of Demosthenes mentions some of his jests. Capperonier refers to Longinus, c. 34, who says that when Demosthenes attempted to be facetious he only raised a laugh at his own expense. Spalding remarks that the judgment of Dionysius Halicarnassensis, *περὶ Δημοσθ. δεινότητος*, c. 54, agrees with the common opinion.

larity was not disliked by him, but that it had not been liberally bestowed on him by nature. 3. But as for our own countryman, he was regarded, not only when not engaged in pleading, but even in his public speeches, as too much an affecter of pleasantry. To myself, whether I judge rightly in that respect, or whether I err through immoderate admiration for our great master of eloquence, there appears to have been an extraordinary vein of delicate wit in him. 4. For in his common conversation, in disputes, and in examining witnesses, he uttered more jokes than any other orator; the dull jests in his orations against Verres * he attributed to others, repeating them as a part of his evidence; and the more vulgar they are, the more probable is it that they were not of his invention, but had been circulated among the people. 5. I could wish, too, that his freedman Tiro, or whoever it was that published the three books of his jests, had been more sparing as to their number, and had used greater judgment in selecting than industry in gathering; for he would then have been less exposed to calumniators, who, however, as in regard to all the productions of his genius, can more easily discover what may be taken away than what may be added.

6. But what causes the chief difficulty in respect to jesting is, that a saying adapted to excite laughter is generally based on false reasoning, and has always † something low in it; it is often purposely sunk into buffoonery; it is never honourable to him who is the subject of it; while the judgments of the hearers with regard to it will be various, as a thing which is estimated, not by any certain reasoning, but by some impulse, I know not whether inexplicable, of the mind. 7. Certainly I think that it has not been sufficiently explained by any one, though many have attempted explanations, whence laughter proceeds, which is excited, not only by actions or words, but sometimes even by a touch of the body. Besides, it is not by one kind of jests only that it is produced; for not merely witty and agreeable acts or sayings, but what is said or done foolishly, angrily, fearfully, are equally the objects of laughter; and thus the origin of it is doubtful, as *laughter* is not far from

* See i. 46.

† The text has *hoc semper humile*. Burmann says that we should read *ad hoc sæpe*. I think him right in both alterations. Spalding refuses to adopt *sæpe*.

*derision.** 8. Cicero has said † that it *has its seat in some deformity or offensiveness*, and if this is made to appear in others, the result is called raillery, but if what we say recoils on ourselves, it is but folly.

Though laughter may appear, however, a light thing, as it is often excited by buffoons, mimics, and even fools, yet it has power perhaps more despotic than any thing else, such as can by no means be resisted. 9. It bursts forth in people even against their will, and extorts a confession of its influence not only from the face and the voice, but shakes the whole frame with its vehemence. It often changes, too, as I said,‡ the tendency of the greatest affairs, as it very frequently dissipates both hatred and anger. 10. Of this the young Tarentines afford an instance, who, having spoken, at a banquet, with great freedom about king Pyrrhus, and being called before him to account for their conduct, when the fact could neither be denied nor justified, saved themselves by a fortunate laugh and jest; for one of them said, *Ah! if our flagon had not failed us, we should have murdered you;* and by this pleasantry the whole odium of the charge was dispelled.

11. But though I should not venture to say that this talent, whatever it is, is certainly independent of art, (for it may be cultivated by observation, and rules relating to it have been composed both by Greek and Latin writers,) yet I may fairly assert that it chiefly depends on *nature* and *opportunity*. 12. *Nature*, moreover, has influence in it, not only so far that one man is more acute and ready than another in inventing jokes, (for such facility may certainly be increased by study,) but that there is in certain persons a peculiar grace in their manner and look, so that the same things that they say, would, if another were to say them, appear less happy. 13. As to *opportunity*, and circumstances, they have such effect, that not only unlearned persons, but even peasants, when favoured by them, make witty repartees to such as are first to address them; for all facetiousness appears to greater advantage in

* *A derisu non procul abest risus.* He that seeks to excite laughter is in danger of incurring derision.

† De Orat. ii. 59.

‡ *Ut dixi.*] I cannot point out the place where this remark is made. The interpreters pass the words in silence; Gedoyn has very wisely omitted them. Did Quintilian merely fancy that he had made such an observation somewhere? See v. 11, 26. *Spalding.*

reply than in attack.* 14. It adds to the difficulty, that there is no exercise in this department, nor any instructors in it. It is true that at convivial meetings, and in the familiar intercourse of life, many jesters are to be met; but their number arises from the circumstance that men improve in jesting by daily practice; the wit that suits the orator is rare, and is not cultivated on its own account, but sent for practice to the school of the world. 15. Yet there would be no objection to subjects being invented for this exercise, so that fictitious causes might be pleaded with a mixture of jesting, or particular theses might be proposed to youth exclusively for such practice. 16. Even those very pleasantries, which are and are called *jokes*,† and in which we are accustomed to indulge on certain days of festal licence,‡ might, if they were produced with some degree of method, or if some serious matter were mingled with them, prove of considerable advantage to the orator; but now they are merely the diversion of youth, or of people amusing themselves.

17. In reference to the subject of which we are treating, we commonly use several words to express the same thing; but, if we consider them separately, each will be found to have its own peculiar signification. The term *urbanity*‖ is applied to it, by which is meant, I observe, a style of speaking which exhibits in the choice of words, in tone, and in manner, a certain taste of the city, and a tincture of erudition derived from conversation with the learned; something, in a word, of which rusticity is the reverse. 18. That that is *graceful*,§ which is expressed with grace and agreeableness, is evident. *Salt*¶ we understand in common conversation only as something to make us laugh; but this notion is not founded in nature; though certainly whatever is to make us laugh must be *salt*. Cicero** says that *everything salt is in the taste of the Attics*,

* So Cicero de Orat. ii. 56, sub fin.

† Dicta *sunt ac vocantur*.] Spalding suspects the integrity of these words, but suggests no satisfactory emendation. The text of this chapter is evidently corrupt in many passages.

‡ As the Bacchanalia and Saturnalia, at which wits contended in uttering jokes for prizes. *Turnebus*

§ *Urbanitas*.

‖ *Venustum*.

¶ *Salsum*.

** Orat. c. 26,

but not because the Attics were most of all people inclined to laughter; and when Catullus * says of a woman, *There is not a grain of salt in her whole body*, he does not mean that there is nothing in her body to excite laughter. 19. That therefore will be *salt* which is not insipid;† and salt will be a natural seasoning of language, which is perceived by a secret taste, as food is tasted by the palate, and which enlivens discourse and keeps it from becoming wearisome. As salt, too, mixed with food rather liberally, but not so as to be in excess, gives it a certain peculiar relish, so salt in language has a certain charm, which creates in us a thirst, as it were, for hearing more. 20. Nor do I conceive that the *facetum* is confined solely to that which excites laughter; for, if such were the case, Horace ‡ would not have said that "the *facetum* in poetry had been granted by nature to Virgil." I think it rather a term for grace and a certain polished elegance; and it is in this sense that Cicero in his letters § quotes these words of Brutus: *Næ illi pedes faceti ac deliciis ingredienti molles*, "*Graceful indeed are her feet, and move gently and with delicacy as she walks;*" an expression similar to that of Horace, *Molle atque facetum Virgilio.* 21. *Jest* ‖ we understand as something contrary to that which is serious; for to feign, to intimidate, and to promise, are sometimes modes of jesting. *Dicacitas* ¶ is doubtless derived from *dico*, and is common to every species of jesting, but it properly signifies language that attacks a person in order to raise a laugh against him. Thus they say that Demosthenes was *urbanus*, "witty," but deny that he was *dicax*, "gifted with the faculty of humorous raillery."

22. But what belongs properly to the subject of which we are treating is *that which excites laughter;* and thus all discussion on the topic is entitled by the Greeks περὶ γελοίου. Its primary division is the same as that of every other kind of speech, as it must lie either in *things* or in *words.* 23. The application of it is very simple; for we try either to make *others* the subject of laughter, or *ourselves*, or something that is

* Epigr. in Quintiam et Lesbiam.
† *Insulsum.*
‡ Sat. i. 10, 44.
§ Not extant.
‖ *Jocus.*
¶ Jocularity; jocular attacks on individuals.

foreign to both. What proceeds *from others* we either blame, or refute, or make light of, or rebut, or elude. As to what concerns *ourselves*, we speak of it with something of ridicule, and, to adopt a word of Cicero's,* utter *subabsurda*, "apparent absurdities;" for the same things that, if they fell from us unawares, would be silly, are thought, if we express them with dissimulation, extremely humorous.† 24. The third kind, as Cicero also remarks, consists in deceiving expectation, in taking words in a sense different from that in which the speaker uses them, and in allusions to other things, which affect neither ourselves nor others, and which I therefore call *intermediate* or neutral.

25. In the second place, we either *do*, or *say*, things intended to excite a laugh. Laughter may be raised by some act of humour, with a mixture, sometimes, of gravity, as Marcus Cælius‡ the prætor, when the consul Isauricus broke his curule chair, had another fixed with straps, as the consul was said to have been once beaten with a strap by his father; sometimes without due regard to decency, as in the story of *Cælius's box*,§ which is becoming neither to an orator nor to any man of proper character. 26. The same may be said of looks and gestures to provoke laughter, from which there may certainly be some amusement, and so much the more when they do not seem to aim at raising a laugh; for nothing is more silly than what is offered as witty. Gravity, however, adds much to the force of jests, and the very circumstance that he who utters a joke does not laugh, makes others laugh; yet sometimes a humorous look, and cast of countenance, and

* De Orat. ii. 71.

† See a similar remark on solecisms and figures, i. 5, 53.

‡ The disputes of Cælius with Isauricus, the son, were famous. What the ancients have said of them has been judiciously brought together by Freinsheimius in his supplement to Livy. This practical joke is related, as far as I know, by no other author besides Quintilian; though the breaking of the chair of Cælius by Isauricus, when he was flattering the people with the hopes of an abolition of debts, is mentioned by Dio Cassius, lib. xlii. The affair took place during the life of Isauricus's father, who died at the age of ninety, about six years afterwards. *Spalding.*

§ See Cic. pro Cæl. c. 25—29. But to find the indecency of the joke we shall in vain inspect either Cicero or his commentators. . . . . That Quintilian should speak with such severity of Cicero I cannot but wonder. *Spalding.*

gesture, may be assumed, provided that certain bounds be observed.

27. What is said in jest, moreover, is either gay and cheerful, as most of the jokes of Aulus Galba;* or malicious, as those of the late Junius Bassus;† or bitter, as those of Cassius Severus;‡ or inoffensive, as those of Domitius Afer. But it makes a great difference *where* we indulge in jests. At entertainments, and in common conversation, a more free kind of speech is allowed to the humbler class of mankind, amusing discourse to all. 28. To offend we should always be unwilling; and the inclination *to lose a friend* rather than a joke should be far from us In the very battles of the forum I should wish it to be in my power to use mild words, though it is allowed to speak against our opponents with contumely and bitterness, as it is permitted us to accuse openly, and to seek the life of another according to law; but in the forum, as in other places, to insult another's misfortune is thought inhuman, either because the insulted party may be free from blame, or because similar misfortune may fall on him who offers the insult. A speaker is first of all to consider, therefore, *what his own character is; in what sort of cause he is to speak; before whom; against whom;* and *what he should say.* 29. Distortion of features and gesture, such as is the object of laughter in buffoons, is by no means suited to an orator. Scurrilous jests, too, and such as are used in low comedy, are utterly unbecoming his character. As for indecency, it should be so entirely banished from his language, that there should not be the slightest possible allusion to it; and if it should be imputable, on any occasion, to his adversary, it is not in jest that he should reproach him with it. 30. Though I should wish an orator, moreover, to speak with wit, I should certainly not wish him to seem to affect wit; and he must not therefore speak facetiously as often as he can, but must rather lose a joke occasionally, than lower his dignity. 31. No one will endure a prosecutor jesting in a cause of a horrible, or a defendant in one of a piti-

* He is mentioned several times in this chapter, and nowhere else. I can say nothing certain as to who he was. *Spalding.* Whether he was the Galba mentioned by Juvenal, v. 4, by Martial, i. 42, x. 20, and by Plutarch, vol. ii. p. 700 A., it is vain to conjecture.

† Of him as little is known. His name occurs three times in this chapter; see sect. 57, 74. See also vi. 3, 27.

‡ vi. 1, 43; v. 10, 79.

able. nature. There are some judges also of too grave a disposition to yield willingly to laughter. It will sometimes occur, too, that reflections which we make on our adversary may apply to the judge, or even to our own client. 32. Some orators have been found indeed, who would not lose a jest that might recoil even on themselves; as was the case with Sulpicius Longus,* who, though he was himself an ugly man, remarked that a person, against whom he appeared on a trial for his right to freedom,† *had not even the face of a free man;* when Domitius Afer, in reply to him, said, *On your conscience, Longus, do you think that he who has an ugly face cannot be a free man?*

33. We must take care, also, that what we say of this sort may not appear petulant, insulting, unsuitable to the place and time, or premeditated and brought from our study. As to jests on the unfortunate, they are, as I said above, unfeeling. Some persons, too, are of such established authority, and such known respectability, that insolence in addressing them could not but hurt ourselves. 34. Regarding our friends a remark has already been made; and it concerns the good sense, not merely of an orator, but of every reasonable being, not to assail‡ in this way one whom it is dangerous to offend, lest bitter enmity, or humiliating satisfaction, be the consequence. Raillery is also indulged injudiciously that applies to many; if, for example, whole nations, or orders, or conditions, or professions, be attacked by it. Whatever a good man says, he will say with dignity and decency; for the price of a laugh is too high, if it is raised at the expense of propriety.

35. Whence laughter may be fairly excited, and from what topics it is generally drawn, it is very difficult to say; for if we would go through all the species of subjects for it, we

* Of him I have nothing to say. No one of that name mentioned by other writers was contemporary with Domitius Afer. *Spalding.*

† *Judicio liberali.*] In which the point to be tried is whether the party is to be a slave or free; it is otherwise called *causa liberalis,* or *assertio.* See v. 2, 1. *Capperonier.*

‡ Ne *lacessat.*] I read *ne* before *lacessat* with Capperonier and most other-editors. Spalding omits the *ne,* giving the passage, after Badius Ascensius, this interpretation: *lacessat eum, quem periculosum sit lædere hoc modo ne,* &c. "The orator must jest with him, whom it is dangerous to offend, in such a way, that," &c. *Lacessere,* he adds, is less than *lædere.*

should find no end, and should labour in vain. 36. For the topics from which *jests* may be elicited, are not less numerous than those from which what we call *thoughts* may be derived,* nor are they of a different nature, since in jocularity also there is *invention* and *expression*, and a display of the force of eloquence, as consisting partly in the choice of *words*, and partly in the use of *figures* of speech. 37. But I may say in general that laughter is educed either from *corporeal peculiarities* in him against whom we speak, or from his *state of mind*, as collected from his actions and words, or from *exterior circumstances* relating to him; for under these three heads fall all kinds of animadversion, which, if applied severely, is of a serious, if lightly, of a ludicrous character. Such subjects for jests are either *pointed out to the eye*, or *related in words*, or *indicated by some happy remark*. 38. But an opportunity rarely offers of bringing them before the eye, as Lucius Julius did, who having said to Helvius Mancia,† when he was repeatedly clamouring against him, *I will now show what you are like*, and Mancia persisting, and asking him to show him what he was like, he pointed with his finger to the figure of a Gaul painted on a Cimbrian shield, which Mancia was acknowledged exactly to resemble; there were shops round the forum, and the shield was hung over one of them as a sign.

39. To relate a jocular story is eminently ingenious, and suitable to an orator; as Cicero in his speech for Cluentius‡ tells a story about Cepasius and Fabricius, and Marcus Cælius that of the contention of Decimus§ Lælius and his colleague when they were hastening into their province. But in all such recitals elegance and grace of statement is necessary, and what the orator adds of his own should be the most humorous part of it. 40. So the retirement of Fabricius from the court is thus set off by Cicero:‖ *When Cepasius, therefore, thought that he was speaking with the utmost skill,*

* See b. viii. c. 5; also Cicero de Orat. ii. 61.

† Cicero de Orat. ii. 66.

‡ C. 21.

§ Some editors read *Caius* Lælius, "who," says Burmann, "was quæstor in Sicily, and went away secretly into his province, in order to anticipate his colleague, with whom he had had a dispute as to which of them should have the province of Syracuse or Libybæum; as is shown, with reference to this passage, by Pighius Ann. ad A.U.C. 699."

‖ Pro Cluent. c. 21.

and had drawn forth those solemn words from the innermost stores of his art, Look on the old age of Caius Fabricius, *when, I say, he had, to embellish his speech, repeated the word* look *several times, he himself* looked, *but Fabricius had gone off from his seat with his head hanging down,* and what he adds besides, (for the passage is well known,) when there is nothing in reality told but *that Fabricius left the court.* 41. Cælius also has invented every circumstance of his narrative most happily, and especially the last: *How he, in following, crossed over, whether in a ship, or a fisherman's boat, nobody knew; but the Sicilians, a lively and jocular sort of people, said that he took his seat on a dolphin, and sailed across like another Arion.*

42. Cicero* thinks that humour is shown in recital, and jocularity in smart attacks or defences. Domitius Afer showed extraordinary wit in narration; and many stories of this kind are to be found in his speeches; but books of his shorter witticisms have also been published. 43. Raillery may also be displayed not in mere shooting of words, as it were, and short efforts of wit, but in longer portions of a pleading, as that which Cicero relates of Crassus against Brutus in his second book *De Oratore,*† and in some other passages.‡ 44. When Brutus, in accusing Cneius Plancus, had shown, by the mouths of two readers, that Lucius Crassus, the advocate of Plancus, had recommended, in his speech on the colony of Narbonne, measures contrary to those which he had proposed in speaking on the Servilian law, Crassus on his part called up three readers, to whom he gave the Dialogues of Brutus's father to read, and as one of those dialogues contained a discourse held on his estate at *Privernum,* another on that at *Alba,* and another on that at *Tibur,* he asked Brutus *where all those lands were.* But Brutus had sold them all, and, for having made away with his father's estates, was considered to have dishonoured himself. Similar gratification from narrative attends on the repetition of apologues, and sometimes on historical anecdotes.

45. But the *brevity* observed in jocular sayings has some-

* Orat. c. 26.

† C. 55.

‡ The commentators refer to Pro Cluent. c. 51. Whether the story is told in any other passage of the extant works of Cicero, I really cannot say. *Spalding.*

thing more of point and liveliness. It may be employed in two ways, in *attack* or in *reply;* and the nature of the two is in a great degree the same; for nothing can be said in aggression that may not also be said in retort. 46. Yet there are some points that seem to belong more peculiarly to reply. What is said in attack, those who are heated with anger* often utter; what is said in rejoinder, is generally produced in a dispute, or in examining witnesses. But as there are innumerable topics from which jokes may be drawn, I must repeat that they are not all suitable for the orator. 47. In the first place, those obscure jokes do not become him, which depend on *double meanings*, and are captious as the jests of an Atellan farce;† nor such as are uttered by the lowest class of people, and which out of ambiguity produce obloquy; nor even such as sometimes fell from Cicero, though not in his pleadings, as when he said, for instance, on occasion of a candidate for office, who was reported to be the son of a cook, soliciting a vote from another person in his presence, *Ego quoque tibi favebo.*‡ 48. Not that all words which have two meanings are to be excluded from our speech, but because they rarely have a good effect unless when they are well supported by the matter. Of which sort§ there is not only a joke of Cicero, almost scurrilous, on Isauricus, the same that I mentioned above,‖ *I wonder what is the reason that your father, the most steady of men, left us a son of so varied a character*¶ *as yourself*, 49. but another excellent jest of his, of the same nature, uttered when the accuser of Milo advanced in proof of an ambush having been laid for Clodius, that *Milo had turned aside to Bovillæ before the ninth hour, to wait till*

* *Irâ concitati.*] Spalding justly doubts the genuineness of these words, but proposes no emendation that satisfies even himself.

† *Atellanæ more captent.*] The *Atellanæ fabulæ* were a species of farce or low comedy, having their name from Atella, a town of the Osci, where they had their origin. Livy, vii. 2.

‡ The jest cannot be translated. It consists in the play on *quoque* for *coque.* "I also will support you," or, "I, O cook, will support you." The ancients wrote *coquus* with a *q* instead of a *c*, as appears from Donatus on Ter. Adelph. iii. 3, 69.

§ Spalding very properly reads *Quale* for *Quare.*

‖ Sect. 25.

¶ *Varium.*] Philander and Gesner rightly understand this word in the sense of *maculosum à plagis,* "spotted with stripes." *Spalding.*

Clodius should leave his villa, and asked several times *when Clodius was killed*, Cicero replied, *Late;* a repartee which is alone sufficient to prevent this sort of jests from being wholly rejected. 50. Nor do ambiguous words only signify more things than one, but even things of the most opposite nature; as Nero said of a dishonest slave, *That no one was more trusted in his house; that nothing was shut or sealed up from him.**

51. Such ambiguity may be carried so far as to be even enigmatical; as in the jest of Cicero on Pletorius, the accuser of Fonteius,† *whose mother*, he said, *had had a school while she was alive, and masters after she was dead;* the truth was, that women of bad character were said to have frequented her house while she was alive, and that her goods were sold after her death; so that *school* is here used metaphorically, and *masters* ambiguously.‡

52 This kind of jest often falls into *metalepsis*;§ as Fabius Maximus,‖ remarking on the smallness of the presents which were given by Augustus to his friends, said that his *congiaria* were *heminaria*, *congiarium* signifying both a gratuity and a measure, and the word *heminarium* being employed to show the littleness of the gratuities.¶ 53. This sort of jest is as poor as is the play upon names, by adding, taking away, or altering letters; as I have seen, for instance, a man named *Acisculus* called *Pacisculus*,** because of some bargain that he had made;

* Cicero de Orat. ii. 61. But the words *Nulli plus apud se fidei haberi*, which spoil the joke, are not given by Cicero.

† A great part of the speech which Cicero delivered in defence of Marcus Fonteius is lost; and among the lost passages is that to which Quintilian alludes. *Spalding.*

‡ The word *magistri*, "masters," as appears from several passages in Cicero's letters, was a term applied to those who had the charge of property sold for debt under the prætor's edict.

§ A figure by which the consequent is put for that which precedes. See viii. 6, 37.

‖ He was consul A.U.C. 743; Tacit. Ann. i. 5. Some epistles of Ovid from Pontus are addressed to him. *Spalding.*

¶ The word *congiarium* is from *congius*, a liquid measure containing nearly six pints English, which, when wine or oil was distributed on certain occasions among the people, was the quantity usually given to each person. Liv. xxv. 2. The *hemina* or *cotyla*, was the twelfth part of the *congius*, about half a pint English.

** From *paciscor*, to make a bargain.

another named *Placidus* called *Acidus* for the sourness of his temper; and Tullius, because he was a thief, called *Tollius.** 54. But pleasantries of this nature succeed better in allusions to things than to names. Thus Domitius Afer very happily said of Manlius Sura, who, while he was pleading, darted to and fro, leaped up, tossed about his hands, and let fall and re-adjusted his toga, *Non agere sed satagere*, that "he was not merely *doing* business in the pleading, but *over-doing* it." The employment of the word *satagere* is a very good joke in itself, though there was no resemblance to any other word. 55. Such jests are made by adding or taking away an aspirate, or by joining two words together; modes in general equally poor, but sometimes passable. Similar, too, is the nature of all jokes that are made upon names; many of which are repeated, as the conceits of others, by Cicero against Verres; in one place, that, as he was called *Verres*, he was destined *verrere omnia*, "to sweep away everything;"† in another, that being *Verres*, "a boar-pig," *he had been more troublesome to Hercules, whose temple he had pillaged, than the boar of Erymanthus*;‡ in another, that *he was a bad* Sacerdos *who had left so vicious a* Verres; because Verres had been the successor of Sacerdos.§ 56. Fortune, however, sometimes affords an opportunity of indulging happily in a jest of this kind; as Cicero, in his speech for Cæcina,‖ remarked upon a witness named Sextus Clodius Phormio, that *he was not less black, or less bold, than the Phormio of Terence.*

57. But jests which are derived from *peculiarities in things* are more spirited and elegant. *Resemblances* are most conducive to the production of them, especially if the allusion be to something meaner and of less consideration; a sort of pleasantry to which the ancients were attached, who called Len-

* From *tollo*, to take away.

† Spalding observes that the reader will in vain seek for this witticism in the pleadings against Verres, though something of a similar nature occurs, ii. 21, and iv. 24, 25; that Quintilian may have learned it from some other quarter, and have imagined that he had seen it in Cicero; and that the allusion is to the second person singular of the future indicative of the verb *verro*.

‡ In Verr. iv. 43.

§ In Verr. i. 46.

‖ C. 10.

tulus *Spinther*,* and Scipio *Serapion*.† 58. But such jests are taken not only from human beings, but from other animals; thus, when I was young, Junius Bassus, a man of extraordinary jocularity, was called a *white ass*;‡ and Sarmentus,§ or Publius Blessus, called Junius, a black man, lean and crook-backed, *an iron clasp*.‖ This mode of exciting laughter is now very common. 59. Such comparisons are sometimes made undisguisedly, and sometimes insinuated in the way of inference. Of the former sort is the remark of Augustus, who, when a soldier was timidly holding out a memorial to him, said, *Do not shrink back, as if you were offering a piece of money to an elephant*. 60. Jokes sometimes rest on some fanciful comparison: as that which Vatinius made, when, being on his trial, and Calvus pleading against him, he wiped his forehead with a white handkerchief, and the accuser made the circumstance the subject of a reflection on him, *Although I lie under an accusation*, returned Vatinius, *I eat white bread*.¶ 61. An application of one thing to another, from some similarity between them, is still more ingenious; as when we adapt, as it were, to one purpose, that which is intended for another. This may very well be called an *imagination;* as, for instance, when, at one of Cæsar's triumphs, models in ivory of the towns which he had taken were carried in procession, and, a few days after, at a triumph of Fabius Maximus,** models in wood of those which Fabius had taken were exhibited, Chrysippus†† observed

* From his resemblance to an inferior actor of that name. Val. Max. ix. 14, 4.

† Because he resembled a *victimarius*, or dealer in animals for sacrifice, of that name. Val. Max. ix. 14, 3.

‡ *Asinus albus*.] Burmann supposes that he was called *Asinus* from some resemblance that he bore to an ass in some part of his person, and *albus* from his complexion.

§ We are made acquainted with Sarmentus by Horace, Sat. i. 5. That he was a favourite of Augustus, appears from Plutarch, vol ii. p. 943. In Horace he has a certain advantage over the adversary with whom he is made to contend. See also Juvenal, v. 3 and his Scholiast. *Spalding*.

‖ From his bent figure.

¶ If I eat white bread, why may I not wipe my face with a white handkerchief? If I use one white thing, why may I not use another? We should remember, as Turnebus observes, that persons under accusation generally wore a dark dress.

** Cæsar's lieutenant-general in Spain; consul A.U.C. 709. *Spalding*.

†† Burmann seems to be right in supposing that this was Chrysippus

that *Fabius's wooden models were the cases of Cæsar's ivory ones.* That was something similar which Pedo* said of a *mirmillo*, who was pursuing a *retiarius*, but did not strike him, *He wishes to take him alive.* 62. Similitude is united with ambiguity; as Aulus Galba said to a player at ball who was standing to catch the ball very much at his ease, *You stand as if you were one of Cæsar's candidates*;† for in the word "stand" there is *ambiguity;* the "ease" is *similar* in both cases. This it is sufficient to have noticed. 63. But there is very frequently a mixture of different kinds of pleasantry; and that indeed is the best which is the most varied.

A like use may be made of things that are *dissimilar.* A Roman knight, to whom, as he was drinking at the public games,‡ Augustus had sent an attendant with the message, *If I wish to dine, I retire to my house*, replied, *You, Augustus, are not afraid of losing your place.* 64. From *contraries* § there are many kinds of jokes. It was not the same sort of jest with which Augustus addressed an officer whom he dismissed with dishonour, and who tried several times to move him with entreaties, saying, "What shall I tell my father?" *Tell him*, said the emperor, *that I have displeased you*, as that with which Galba¶ replied to a person who asked him for the loan of a

Vettius, the freedman of Cyrus, and an architect, as he appears to have been in Gaul, and was perhaps in the retinue of Cæsar. See Cicero ad Div. vii. 14; ad Att. xiv. 9. *Spalding.*

* I have no doubt that this was the poet Caius Pedo Albinovanus, who is casually mentioned, x. 1, 90. *Spalding.*

† *Sic petis tanquam Cæsaris candidatus.*] There is an ambiguity in the Latin *petis*, for which I have given "stand." *Cæsaris candidatus* means a candidate for office recommended by the emperor, and consequently sure of being elected.

‡ After the time of Augustus this practice became common enough; and, when the people were detained whole days at the spectacles, a certain sum of money was allowed by the emperor to each order, to buy wine to drink in the theatre; see the commentators on Martial, i. 12, 27, who refer to this passage of Quintilian. *Spalding.*

§ When the reply is contrary to what might have been expected from the question.

‖ See Macrob. Sat. ii. 4, whence we learn that the officer was Herennius, a young man of immoral character. *Spalding.*

¶ Whether this be the same Galba that is mentioned in sect. 62, I think is very uncertain, as he lived, it appears, in a *cœnaculum*, or garret, a habitation for the poorer classes. Perhaps we should understand Caius Galba, the brother of the emperor, who, after wasting his property, is said to have left the city. Suet. Galb. c. 3. *Burmann.*

cloak, *I cannot lend it you, for I am going to stay at home*, the fact being that the rain was pouring through the roof into his garret. I will add a third, though respect for its author prevents me from giving his name, *You are more libidinous than any eunuch;* where doubtless expectation is deceived by something contrary to that was looked for. Of similar origin, though different from any of the preceding, is the observation of Marcus Vestinius, when he was told that some nasty fellow was dead, *He will then at length*, said he, *cease to stink.** 65. But I should overload my book with examples, and make it similar to such as are composed to excite laughter, if I should go through all the sorts of jests uttered by the ancients.

From all modes of argument, there is the same facility for extracting jokes. Thus Augustus, in speaking of two actors in pantomime, who vied with each other in gesticulation, employed *definition*, calling the one a *dancer*, and the other an *interrupter of dancing*.† 66. Galba used *distinction*, when he replied to one who asked him for his cloak, *You cannot have it, for, if it does not rain, you will not want it, and, if it does rain, I shall wear it myself.* From *genus, species, peculiarities, differences, connexions,‡ adjuncts, consequents, antecedents, contrarieties, causes, effects, comparisons of things equal, greater, and less*, similar matter for jesting is extracted. 67. It is found, too, in all the figures of speech. Are not many jokes made καθ' ὑπερβολήν, by the aid of hyperbole? Cicero gives us one example, in reference to a very tall man, that *he had struck his head against the arch of Fabius;*§ and another is afforded in what Oppius said of the family of the Lentuli, of which the children were invariably shorter than their parents, that *it would by propagation come to nothing.* 68. As for *irony*, is it not in itself, when employed very

* He was of course, says Burmann, a dirty fellow, that offended other people's noses.

† *Alterum* saltatorem *dixit, alterum* interpellatorem.] The one, says Spalding, was such a dancer as he ought to have been; the other a mere spoiler of dancing. But we do not see the point of the joke. Perhaps *interpellatorem* is corrupt.

‡ *Jugatis.*] See v. 10, 85.

§ Cicero de Orat. ii. 66. But the joke is there attributed to Crassus. Nor is it quite the same in form, for Memmius is said by Crassus merely to have stooped his head as he went under the arch of Fabius. Spalding supposes that Quintilian was misled by his imagination. The arch of Fabius was so called from having been built by Fabius Allobrogicus.

gravely, a species of joking? Domitius Afer used it very happily, when he said to Didius Gallus, who had made great solicitations for a province, and, after obtaining it, complained as if he were forced to accept it. *Well, do something for the sake of the commonwealth.** Cicero, too, employed it very sportively, on a report of the death of Vatinius, for which the authority was said to be far from certain, *In the meantime*, said he, *I will enjoy the interest.*† 69. Cicero used also to say, *allegorically*, of Marcus Cælius, who was better at accusing than defending, *that he had a good right-hand, but a bad left.*‡ Julius used the *antonomasia*, when he said *Ferrum Accium Nœvium incidisse.*§

70. Jocularity also admits all *figures* of thought, called by the Greeks σχήματα διανοίας, under which some have ranked the various species of jests; for we *ask questions*, and *express doubt*, and *affirm*, and *threaten*, and *wish;* and we make some remarks as if *in compassion*, and others *with anger*. But everything is jocular that is evidently pretended.

71. To laugh at foolish remarks is very easy; for they are ridiculous in themselves; but some addition of our own increases the wit. Titus Maximus foolishly asked Carpathius as he was going out of the theatre, *Whether he had seen the play;* when Carpathius made the question appear more ridiculous by replying, *No, for I was playing at ball in the orchestra.*

72. *Refutation* admits of jesting either in the form of *denial*, *retort*, *defence*, or *extenuation*. Manius Curius made a good repartee *by way of denial;* for when his accuser had had him painted on a curtain,‖ everywhere either stripped and in prison in consequence of gambling, or being redeemed by

* Having obtained the province, by solicitation, for your own sake, govern it for the sake of your country.

† The report may not be true, but I will enjoy the hope that it may not be false. If the capital on which interest is paid me, be but imaginary, I may still make the most of the interest.

‡ The sword was held in the right hand, to attack; the shield in the left, to defend. *Turnebus.*

§ A passage which we must leave in despair; for it cannot be amended without the help of some better manuscript. *Burmann.* How the words are to be taken, so as to make a joke, it is impossible to conjecture.

‖ We must suppose, says Gesner, that the curtain was divided into compartments, and that some scene of his life was represented in each compartment.

his friends, *Was I, then*, he replied, *never successful?* 73. *Retort* we use sometimes undisguisedly, as Cicero in reply to Vibius Curius, who was telling falsehood concerning his age, said, *Then, when we declaimed in the schools together, you were not born;* sometimes with feigned assent, as the same orator said to Fabia, Dolabella's wife, who observed that she was thirty years old, *No doubt, for I have heard you say so these twenty years.* 74. Sometimes in place of what you deny, something more cutting is happily substituted: as Junius Bassus, when Domitia, the wife* of Passienus, complained that he had said, as a charge of meanness against her, that *she used to sell old shoes*, replied, *No, indeed. I never said any such thing; I said that you used to buy them.* A *defence* a Roman knight made with some humour, replying to Augustus, who reproached him with having eaten up his patrimony, *I thought it was my own.*

75. Of *extenuation* there are two modes; a person may make light of another's claims to indulgence,† or of some boast that he utters. Thus Caius Cæsar‡ said to Pomponius, who was showing a wound which he had received in his mouth in the sedition of Sulpicius, and which he boasted that he had received in fighting for Cæsar, *When you are fleeing, never look back.* Or it may extenuate some fault imputed to us, as Cicero said to those who reproached him with having at sixty years of age married Publilia§ a virgin, *To-morrow she will be a woman.* 76. Some call this kind of jest *consequent*, and similar to that of Cicero when he said that *Curio*, who always began his pleadings with an excuse for his age, *would find his exordium every day more easy*, because the reply seems naturally to follow and attach itself to the remark. 77. But one kind of extenuation is a suggestion of a *reason*, such as Cicero gave to Vatinius, who, having the gout, but wishing to appear improved in health, said that he could walk two miles a-day, *The days*, rejoined Cicero, *are very long.* Augustus made a similar answer to the people of Tarraco, who told him that a palm-tree had grown on his altar in their city: *It shows*, said he,

* See c. 1, sect. 50.

† *Veniam.*] The genuineness of this word is very doubtful. Spalding would read *aut* vanam *quis* alius *jactantiam minuat*, &c.

‡ Caius Julius Cæsar Strabo, cousin to the dictator's father. *Turnebus.*

§ Whom he married after he divorced Terentia. Ad Att. xii. 32.

how often you make a fire on it. 78. Cassius Severus transferred* a charge from himself to others; for when he was reproached by the prætor that his advocates had insulted Lucius Varus an Epicurean, a friend of Cæsar, he replied, *I do not know what sort of characters committed the insult, but suppose that they must have been Stoics.*

Of *rebutting* a jest there are many ways; the most happy is that which is aided by some resemblance in the words, as Trachalus, when Suellius said to him, *If this is so, you go into exile,* replied, *And if it is not so, you return into exile.* 79. Cassius Severus, when a person made it a charge against him that Proculeius had forbidden him his house, *eluded* the charge by replying, *Do I ever then go to Proculeius's house?* Thus one jest is eluded by another; as the Emperor Augustus, when the Gauls had made him a present of a collar of a hundred pounds weight, and Dolabella had said in jest, though with some solicitude as to the event of the jest, *Distinguish me, General, with the honour of the collar,* replied, *I had rather distinguish you with the honour of a civic crown;*† 80. and one falsehood may also be eluded by another; as when a person said in the hearing of Galba that *he had bought in Sicily for one victoriatus*‡ *a lamprey five feet long,* Galba rejoined that *it was not at all surprising, as they grew so long there that the fishermen used them for ropes.* 81. Opposed to the negative is the pretence of *confession,* which also has much wit. Thus Domitius Afer, when he was pleading against a freedman of Claudius Cæsar, and a person of the same condition as the party against whom he was pleading called out from the opposite side of the court, *Do you then always speak against the freedmen of Cæsar?* replied, *Always, and yet, by Hercules, I produce no effect.*§ Similar to confession is *not to deny* what is alleged, though it be evidently false, and though opportunity for an excellent answer be suggested by it; as Catulus, when Philippus said to him, *Why do you bark?* replied, *Because*

* *Transtulit.*] See on *translatio,* or "exception," iii. 6, 23.

† Which was made of oak leaves.

‡ A small coin, the half of a denarius, about 3¾d. of our money. It was so called from having a figure of victory stamped on it.

§ It is known from Tacitus, Suetonius, and Dio Cassius, how much Claudius was under the government of his freedmen. Hence the boldness of Domitius Afer's remark is the more commendable. *Spaldiug.*

*I see a thief.** 82. To joke upon one's self, is, I may say, the part only of a buffoon, and is by no means allowable in an orator. It may be done in as many ways as we joke upon others · therefore, though it be too common, I pass it over. 83. Whatever, moreover, is expressed scurrilously or passionately, is, though it may raise a laugh, unworthy of a man of respectability. Thus I know a man who said to an inferior person, that had addressed him with too little respect, *I will inflict a blow on your head, and bring an action against you for hurting my hand by the hardness of your head.*† At such a saying it is doubtful whether the hearers ought to laugh or feel indignation.

84. There remains to be noticed the kind of joke that consists in *deceiving expectation*,‡ or taking the words of another in a sense different from that in which he uses them; and of all sorts of jests these may be said to be the happiest. But an unexpected turn may be adopted even by one who attacks; such as that of which Cicero gives an example: *What is wanting to this man except fortune and virtue?* Or as that of Domitius Afer: *For pleading causes he is a man excellently apparelled.*§ Or it may be used in anticipating the answer of another person. Thus Cicero,‖ on hearing a false report of the death of Vatinius, asked his freedman Ovinius, *Is all well?* and, when he said *All is well*, rejoined, *He is then dead?* 85. Great laughter attends on *simulation* and *dissimulation*, which may be thought similar and almost the same, but *simulation* is the act of one who pretends to feel a certain persuasion in his mind; *dissimulation* that of one who feigns not to understand another's meaning. Domitius Afer used simulation, when, on some persons reiterating at a trial that *Celsina knew the facts*, (who was a woman of some influence,) he asked, *Who is he?* wishing to make it appear that he thought Celsina a man. 86. Cicero used dissimulation when a witness, named Sextus Annalis, had given testimony against a person whom he was defending, and the prosecutor several

* Cicero de Orat. ii. 54.

† I interpret this jest according to the conception of Burmann.

‡ See ix. 2, 22; Cicero de Orat. ii. 70.

§ *Optimè vestitus.*] *Vestitus* instead of *exercitatus*, *versatus*, or *paratus*. Turnebus.

‖ Comp. sect. 68.

times pressed him, crying, *Tell us, Marcus Cicero, whether you can say anything of Sextus Annalis;* Cicero immediately began to recite from the sixth book of the Annals of Ennius,*

Quis potis ingentis causas evolvere belli?
Who can the cause of this great war disclose?

87. For this kind of jest ambiguity doubtless affords the most frequent opportunity; as it did to Cascellius,† who, when a person consulting him said, *I wish to divide my ship*,‡ rejoined, *You will lose it then.* But the thoughts are often sent in another direction, by a remark being turned off from something of greater to something of less consequence; as when the person who was asked what he thought of a man caught in adultery, replied that *he was slow*.§ 88. Of a similar nature is that which is said in such a manner as to convey a *suspicion* of the meaning; as in an example to be found in Cicero.‖ When a man was lamenting that his wife had hung herself on a fig-tree, *I beg you*, said another to him, *to give me a slip of that tree, that I may plant it;* for the meaning, though not expressed, is very well understood. 89. Indeed all facetiousness lies in expressing things with some deviation from the natural and genuine sense of the words employed;¶ and this is wholly done by misrepresenting our own or other people's thoughts, or by stating something that cannot be. 90. Juba** misrepresented the thought of another, when he said to a man that complained of having been bespattered by his horse, *What! do you think me a Hippocentaur?*†† Caius Cassius misrepresented his own, when he said to a soldier hurrying to the field without his sword, *Ah! comrade, you will use your*

* *Dic*, said the prosecutor, *de Sexto Annali:* Cicero repeated a verse *de Sexto Annali*, or *de Sexto Ennii Annalium libro.* It was probably the first verse of the book; or, if not, one with which his hearers were well acquainted. Virgil has an imitation of it, Æn. ix. 528.

† Cascellius Aulus, the famous lawyer mentioned by Hor. Epist. ad Pis. 371.

‡ Meaning, to divide or share the freight of it with some other person.

§ Cicero de Orat. ii. 68.

‖ De Orat. ii. 69.

¶ *Aliter quàm est rectum verumque.*] So in sect. 6 he says *ridiculum dictum plerumque falsum est.*

** Juba the historian, whom Julius Cæsar led in triumph, and Augustus restored to his kingdom.

†† The person who complained seems to have said, "*You* have bespattered me," when the spattering had proceeded from the horse.

fist well;* and Galba did the same when some fish, which had been partly eaten the day before, were put upon the table with their other side uppermost: *Let us make haste to eat*, said he, *for there are people under the table supping upon the same dish.* Of the same sort is the jest of Cicero on Curius, which I have just mentioned,† for it was impossible that he should not have been born when he was declaiming. 91. There is a certain misrepresentation, too, that has its origin in irony, of which Caius Cæsar‡ gives us an example; for when a witness said that his groin had been wounded by the accused person, and it was easy to show why he had wished to wound that part of his body rather than any other, Cæsar preferred to say, *What could he do, when you had a helmet and a coat of mail?*§ 92. But the best of all simulation is that which is directed against one who simulates, such as that which was employed in the following instance by Domitius Afer: He had by him a will which had been made some time, and a man whom he had taken into his friendship since the date of it, hoping to gain something if he should alter it, told him a story of his own invention, for the purpose of asking him whether he should advise an old chief centurion,‖ who had already made his will, to make another,¶ *By no means do so*, said Domitius, *for you will offend him.*

93. But the most agreeable of all such pleasantries, are such as are good-natured, and, so to speak, easy of digestion; such as that which the same orator once addressed to an ungrateful client, who avoided recognition from him one day in the forum; he sent this message to him by an attendant: *Are you not obliged to me for not having seen you?* Or as that which he addressed to his steward, who, when he was unable to give an account of the money in his hands, remarked several

* He pretended to think that the soldier had left his sword behind him intentionally, and was going to fight with his fists. *Turnebus.*

† Sect. 73.

‡ The same, I suppose, that is mentioned in sect. 75. *Spalding.*

§ Quintilian doubtless saw more wit in this supposition than we can see.

‖ Perhaps there was a good deal of talk about the wills of that class of men at that time. *Spalding.*

¶ *Ordinare suprema judicia.*] This phrase is often used for *testari* by the lawyers. The substantive, however, is very frequently omitted. *Spalding.*

times, "I have eaten no bread, and I drink water;" *Sparrow*, said Domitius, *return what you ought to return.** These kinds of jokes they call jokes applicable to character. 94. It is a pleasing sort of jest, too, that lays less to the charge of another than might be laid; thus when a candidate for office applied to Domitius Afer for his vote, saying, "I have always respected your family," Domitius, when he might have boldly denied the assertion, said, *I believe you, and it is true.* It is sometimes amusing to speak of one's self.† That, too, which, if said regarding a person in his absence, would be ill-natured, is, when uttered as an attack upon him to his face, a mere subject for laughter. 95. Such was the remark of Augustus, when a soldier was requesting something unreasonable of him, and Marcianus, whom he suspected of intending to ask of him something unjust, came up at the time: *I will no more do what you ask, comrade,* said he to the soldier, *than I will do* that *which Marcianus is going to ask.* 96. Verses also, aptly quoted, have given great effect to witticisms, whether introduced entire and just as they are, (a thing so easy, that Ovid has composed a book against bad poets in verses taken from the Tetrastichs of Macer,‡) and this mode of citation is the more agreeable if it be seasoned with something of ambiguity, as in Cicero's remark upon Marcius,§ a man of much cunning and artifice, when he was suspected of unfair dealing in a cause,

> *Nisi quâ Ulixes rate evasit Laertius,*‖
> Unless Ulysses, old Laertes' son,
> Had in his ship escap'd;

97. or with some little change in the words; as when Cicero jested on a senator, who, having been always thought extremely foolish, was, after inheriting an estate, called upon first to give his vote in the senate, saying,

* *Passer, redde quod debes.*] The commentators give no satisfactory explanation of *Passer*. Gebhardt's comment on it is mere trifling. Spalding admits that he can find nothing among the ancient writers to illustrate it, though he retains it in his text. It is certainly better to read *pascere*, "Eat, and give a proper account of your money," with Obrecht and Francius.

† I wonder that no example is given. *Spalding.*

‡ Of these tetrastichs of Æmilius Macer nothing is left. See Broukhusius ad Tibullum, ii. 6, 1.

§ It is uncertain whether this name be genuine.

‖ A verse from some unknown tragedy.

Cujus hæreditas est quam vocant sapientiam,
Th' estate of whom is that which they call wisdom,

putting *hæreditas*, "estate," for *facilitas*, "faculty;" or by inventing verses similar to some well-known verses, which is called a parody. 98. Or proverbs may be aptly applied, as a person said to a man of bad character who had fallen down, and asked to be helped up, *Let some one take you up who does not know you.**

To take a jest from history shows learning; as Cicero did, on the trial of Verres; for when he was examining a witness, Hortensius observed, "I do not understand these enigmas;" *But you ought,* replied Cicero, *as you have a Sphinx at home;* for he had received from Verres a brazen Sphinx of great value.

99. As to *apparent absurdities*,† they consist in an imitation of foolish sayings, and would, if they were not affected, be foolish; as that of the man who, when the people expressed their wonder that he had bought a low candlestick, said to them, *It will serve me for breakfast.*‡ But some that are very like absurdities, and that seem to be said without any reason at all, are extremely pointed; as when the slave of Dolabella was asked whether his master had advertised a sale of his property, he replied, *He has sold his house.*§ 100. Persons taken by surprise sometimes get rid of their embarrassment by a jest. Thus when an advocate asked a witness who said that he had been wounded by the person on trial, "whether he had a scar to show," and the witness showed a large one on his groin, *He ought,* observed the advocate, *to have aimed at your side.*‖ It is also possible to use insulting expressions happily; as Hispo, when his accuser twice imputed heinous crimes to him, replied,

* Compare Hor. Epist. i. 17, 62.

† See sect. 43.

‡ *Pransorium erit.*] *Prandia.* similar to our breakfasts, required smaller apparatus than were used for dinner. *Spalding.* A low candlestick diffuses but little light, and is consequently of small use at night; the man said, therefore, that it would serve for breakfast, when, indeed, as it would be daylight, no lamp would be required. *Turnebus.*

§ By this reply he signified that his master was reduced to sell everything; for the house which a person inhabits will be the last thing that he will sell. *Turnebus.*

‖ My client ought to have aimed at your side, and at a mortal part, and you would then have been prevented from giving evidence against him on the present occasion. *Gesner.*

You lie. And Fulvius, when Legatus, who asked him whether a will, which he produced, had a signature, replied, *And a true one, master.**

101. These are the most usual sources, that I have either found indicated by others, or discovered for myself, from which jests may be derived; but I must repeat,† that there are as many subjects for facetiousness as for gravity; all which persons, places, occasions, and chances, which are almost infinite, suggest to us. 102. I have therefore touched upon these points that I might not seem to neglect them; and what I have said on the practice and manner of jesting was, though unsatisfactory, nevertheless necessary.

To these Domitius Marsus, who wrote a very carefully studied treatise on *Urbanitas*, "urbanity," adds some examples of sayings that are not laughable, but admissible even into the gravest speeches; they are elegantly expressed, and rendered agreeable by a certain peculiar kind of wit; they are indeed *urbana*, "urbane," or "polished," but have nothing to do with the ridiculous. 103. Nor was his work intended to treat of laughter, but of *urbanitas*, which, he says, is peculiar to our city, and was not at all understood till a late period, after it became common for the term *urbs*, though the proper name was not added, to be taken as signifying Rome 104. He thus defines it:‡ "*Urbanitas* is a certain power of thought, comprised in a concise form of expression, and adapted to please and excite mankind, with reference to every variety of feeling, being especially fitted either to repel or to attack, as circumstances or persons may render necessary." But this definition, if we take from it the particular of conciseness, may be considered as embracing all the excellences of language; for, if it concerns things and persons, to say what property applies to each of them is the part of consummate eloquence; and why he made it a necessary condition that it should be concise, I do not know.

105. But, in the same book, a little farther on, he defines another kind of *urbanitas*. peculiar to narrative, (which has

* In these two repartees no wit is to be discovered; the text is probably corrupt or defective; "but," says Spalding, "I had rather abstain from attempting emendation than pretend to see in the thickest darkness."

† Comp. sect. 35, 36.

‡ See Quintilian's own definition, sect. 17. *Gesner.*

been displayed, he says, in many speakers,) in the following manner, adhering, as he states, to the opinion of Cato: "A man of *urbanitas* will be one from whom many good sayings and repartees shall have proceeded, and who, in common conversation, at meetings, at entertainments, in assemblies of the people, and, in short, everywhere, speaks with humour and propriety. Whatever orator shall deliver himself in this way, laughter will follow." 106. But if we receive these definitions, whatever is said well, will also have the character of *urbanitas*. To a writer who proposed such specifications, it was natural to make such a division of *urbane* sayings as to call some *serious*, some *jocose*, and others *intermediate;* for this division applies to all properly expressed thoughts. 107. But to me, even some sayings that are jocose, appear not to be expressed with sufficient *urbanitas*, which, in my judgment, is a character of oratory *in which there is nothing incongruous, nothing coarse, nothing unpolished, nothing barbarous to be discovered, either in the thoughts, or the words, or the pronunciation, or the gestures;* so that it is not to be looked for so much in words considered singly, as in the whole complexion of a speech; like Atticism among the Greeks, which was a delicacy of taste peculiar to the city of Athens.

108. Yet that I may not do injustice to the judgment of Marsus, who was a very learned man, I will add that he distinguishes *urbanitas*, as applied to *serious* sayings, into the *commendatory*, the *reproachful*, and the *intermediate*. Of the commendatory he gives an example from Cicero, in his speech for Ligarius,* when he says to Cæsar, *Thou who art wont to forget nothing but injuries.* 109. Of the reproachful he gives as an instance what Cicero wrote to Atticus† concerning Pompey and Cæsar: *I have one whom I can avoid; one whom I can follow, I have not.* Of the intermediate, which he calls *apopthegmatic*, he cites as a specimen these other words of Cicero:‡ *that death could never be either grievous to a brave man, or premature to a man who has attained the consulship, or calamitous to a wise man.* All these passages are very happily expressed; but why they should be peculiarly dis-

* C. 12.

† Ad Att. viii. 7, with which Quintilian's words do not exactly correspond. Comp. Plutarch, vol. ii. p. 205; Macrob. Saturn. ii. 3. See also viii. 5, 18. *Spalding.*

‡ In Catil. iv 2.

tinguished by the character of *urbanitas*, I do not see. 110 If it is not the whole complexion of a composition, (as it appears to me,) that entitles it to this distinction, and if the term is to be applied to single expressions, I should rather give the character of *urbanitas* to those sayings which are of the kind called *droll*, but which yet are not droll, such as the following: 111. It was said of Asinius Pollio, who could adapt himself alike either to business or to pleasure, *that he was a man for all hours;* and of a pleader, who spoke with ease extemporaneously, *that he had all his wit in ready cash.* Such, too, was the saying of Pompey, which Marsus notices, addressed to Cicero, who expressed distrust of his party; *go over to Cæsar, then, and you will fear me.** Though this, if it had been uttered on a less important occasion, or in another spirit, or by any other person than Pompey, might have been numbered among droll sayings. 112. To these may be added what Cicero wrote to Cerellia,† assigning a reason why he so patiently endured the proceedings of Cæsar: *These things must be borne, either with the mind of a Cato or with the stomach of a Cicero;* for the word stomach carries with it something like a jest.

These reflections, which struck me with regard to the definitions of Marsus, I could not withhold from my readers; in which, though I may have erred, I have not deceived them, having pointed out at the same time a different opinion, which it is free for those, who approve it, to follow.

CHAPTER IV.

Remarks on *altercation* or discussion, § 1—5. Too much neglected by some pleaders, 6, 7. Qualifications requisite for success in it; acuteness, knowledge of the case, good temper, attention to the main question, 8—13. Further observations, 14—16. We may dissemble our strength, in order to mislead our adversary, 17, 18. Disposition of the judge to be observed, 19, 20. The student should exercise himself in this department, 21. Order of proofs is important, 22.

1. It might appear that I should not enter upon precepts

* As Cicero was constantly saying that he was afraid of Cæsar and his army, Pompey said to him, Go over to Cæsar, and you will then fear me, you who are always afraid of the enemy. *Capperonier.*

† A learned and philosophical lady with whom Cicero had some correspondence, of which the sentence in the text is the only remaining fragment. *Spalding.* See Dio Cass. b. xlvi. p. 461, ed. Reim.

concerning *discussion** until I have treated of every particular regarding continuous speaking; for recourse is had to discussion last of all;† but, as it depends on invention alone, and can have no concern with arrangement, nor requires any great ornament from style, or much assistance from memory or delivery, I think that, before I proceed to the second of the five parts, I shall treat of this, which is connected wholly with the first, in a not improper place, if I speak of it here. 2. It is a matter which other writers have neglected, perhaps because sufficient regard seemed to have been paid to it in the other rules of the art; for it consists either in attack or defence, concerning which a considerable number of directions have been given;‡ since whatever is proper with regard to proofs in a continued speech, must also necessarily be applicable to the brevity and conciseness of discussion, in which no other topics are introduced than are in the rest of the pleading; they are only treated in another manner, that is, by way of question and answer. Almost all that is necessary to be observed with respect to this head has been noticed by me§ in the part relating to witnesses. 3. Yet, as I am pursuing this work on an extensive plan, and as an orator cannot be called accomplished without ability in discussion, let me devote a little particular attention to this point also, which, indeed, in some causes, contributes greatly to insure success. 4. For as, with regard to the general *quality* of an action, when it is considered whether it was justly done or otherwise, continuous speaking is most required, which also sufficiently sets forth, for the most part, questions of *definition* or *exception*,‖ as well as all those in which a fact is admitted, or inferred, by

* *Altercationis.*] *Altercatio* is disputation consisting in answers and replies, or, as Quintilian says a little farther on, *brevis et concisa actio*, as opposed to *actio continua* or *perpetua*, which is not interrupted by any questions from the opposite party. There is an excellent example of *altercatio* in Cicero's Epist. ad Att. i. 16. *Capperonier.*

† That is, after the regular pleading of the cause. *Turnebus.*

‡ The commentators refer to b. iii. c. 9, but there are allusions to the subject in various passages of the work, especially in book v., where proof and refutation are formally noticed. *Spalding.*

§ B. v. c. 7.

‖ *Quæstiones finitionis* (et) *actionis.*] Actio is here to be interpreted *status translativus*, or "state of exception." See iii. 6, 23. *Spalding.* We must read *quæstiones* in the plural, as Spalding observes; and it will be better to insert *et* between the two other substantives.

*conjecture** from artificial proof;† so in those causes, (a very numerous class,) which either depend solely on proofs called inartificial,‡ or such as are of a mixed kind, the heat of discussion is frequently most fierce; nor should we say that advocates point their swords at each other in any part of a cause more closely than in this. 5. For the strongest arguments must here be inculcated on the mind of the judge; whatever we promised in the course of our pleading must be made good; and the false allegations of the opposite party must be refuted. There is no part of a cause, indeed, in which the judge is more attentive; and some pleaders, though but of moderate power in speaking, have, by their excellence in disputation, gained a just title to the name of advocates. 6. But some, on the other hand, satisfied with having bestowed on their clients the showy labour of declamation, quit the benches at the close of it, attended with a crowd of flatterers, and leave to ignorant and mean practitioners§ the conduct of the battle which ought to decide the cause. 7. Accordingly, in private causes, we may see some advocates chosen for *pleading* and others for the *establishment of proofs.* But if these duties are to be divided, the latter is surely of more importance than the former; and it is dishonourable to oratory to say that inferior pleaders profit their clients more than those of greater ability. At public trials, however, the voice of the crier cites him who has pleaded‖ as well as the other advocates.

8. For such disputation, then, there is need, in the first place, of a quick and active intellect, and of a ready and keen judgment. For we have no time to reflect, but must speak at once, and aim a blow at our adversary at the same time that we parry his attempt on ourselves. As it is of the greatest importance, therefore, to every part of an orator's duty, to know his whole cause not only accurately, but familiarly, so it is of the utmost necessity, in altercation with our adversary, to have a thorough knowledge of all the cha-

* *Statu conjecturali.*] See b. iii. c. 6.

† See b. v. c. 1.

‡ See b. v. c. 1.

§ *Pullatæ turbæ.*] Comp. ii. 12, 10. But it is the *pragmatici* that are here understood, as Turnebus justly remarks. *Spalding.*

‖ He cannot go off, as in private causes.

racters, instruments, times, and places connected with it; otherwise we shall often be put to silence, or, if others suggest replies to us, we must, from necessary haste to speak, unreasoningly acquiesce in what they say; whence it will sometimes happen that in trusting to others, we shall have to blush for their folly. Nor is the matter made clear by these monitors.* 9. Some advocates, too, try undisguisedly to bring us to a quarrel; for we may see many of them, transported apparently with wrath, calling upon the judge *to attend*, and saying that *what is suggested is contrary to fact*, and that *he who is to decide the cause should understand the evil which is kept out of sight.* 10. He who would be a good disputant, therefore, must be free from the vice of passionateness; for no affection of the mind is a greater enemy to reason; it carries us out of the cause, leads us, frequently, to offer and incur gross insults, sometimes draws upon us the indignation of the judges themselves. Moderation is better, and sometimes even sufferance; for allegations made by the opposite party must not only be refuted, but must be held up to contempt, must be undervalued and ridiculed; nor can wit find any better place for exercise than this. Such is the case as long as matters are conducted with order and due respect to us; but against turbulent adversaries we must show a bold face, and oppose impudence with firmness. 11. For there are some speakers of such a hardened front that they assail us with loud bluster, interrupt us in the middle of a speech, and confuse and disturb the whole proceedings; these we must be so far from imitating, that we must vigorously repel them; their insolence must be put down; and we must at times appeal to the judges or presiding magistrates that the times for speaking may be fairly observed. It is no task for an indolent mind, or an excessively modest character; and that which is called *honesty* often bears a false name, and should rather be called *imbecility*.

12. What is of the greatest value in disputation is *acuteness*, which doubtless does not come from art; (since what is natural is not taught;) but it may be improved by art. 13. The chief requisite is, to keep the point in dispute, and that which we wish to establish, constantly before our eyes; because, if we keep to one object, we shall not be led into useless altercation,

* *Neque tamen hoc ipsis monitoribus clarescit.*] Burmann would read *neque tamen lis his monitoribus clarescit.*

or waste the time due to the cause in railing; and, if our adversary commit such errors, we shall have the pleasure of taking advantage of them.

14. To those who have meditated carefully what may be objected on the opposite side, or what replies may be made on their own, all occasions * may be turned to advantage. It is a kind of artifice employed at times, however, to contrive that certain points, which have been concealed in the course of the pleading. may be suddenly brought forth in the subsequent discussion; starting out as it were in an unexpected sally, or a spring † from an ambush. This is a plan which may be adopted when there is some particular in the cause on which we cannot speak satisfactorily at once, but which we can make clear when time is given us for consideration.‡ 15. What is secure and solid, it will be best to bring forward at the commencement of our proceedings, that we may insist upon it the oftener and the longer. It seems scarcely necessary to direct that a disputant should not be turbulent and clamorous merely, like people who are utterly strangers to learning; for audacity, though it may be troublesome to the adversary, is at the same time hateful to the judge. 16. It is inexpedient, too, to contend long for a point which you cannot carry; for where you must be conquered, it is better to yield; because, if there be several points in dispute, the good faith which we show with regard to one will cause us to be more trusted with respect to others, or, if there be but one point, a lighter penalty may be inflicted on us in consequence of a candid acknowledgment. To persist in vindicating a fault, especially when it is exposed, is to commit another fault.

17. While the contest is undecided, there is great skill and artifice in drawing on our adversary when wandering from the point, and forcing him to go as far from it as possible, in such a way that he may exult at times in false hopes of success. Some points in our evidence may accordingly with advantage be kept back; for our opponents will perhaps press for them with importunity, and risk the whole of their cause on what

* *Omnia tempora.*] Capperonier and Spalding agree with Rollin in thinking that *tempora* should be expunged.

† *Citissimo facto.*] *Facto,* observes Burmann, can hardly be Quintilian's word. He proposes *impetui* or *incursui.*

‡ *Ad disponendum.*] I have no doubt that Quintilian wrote *dispiciendum.* Comp. x. 7, 20. *Spalding.*

they think that we cannot produce, adding authority to our proofs by the earnestness with which they demand them. 18. It may be of use, too, at times, to abandon some point to our adversary, which he may think in his favour, in order that, while he is grasping it, he may let slip something of greater importance; or to offer him his choice of two things, either of which he will choose to his disadvantage; a course which may be adopted with more effect in discussion than in regular pleading, because in the one we reply to ourselves, and in the other we convict our adversary, as it were, on his own confession.

19. It is the part of an acute pleader to observe, above all, by what remarks the judge is most impressed, and to what he listens with disapprobation; a circumstance which may often be discovered from his looks, and sometimes from some word or gesture. He ought then to insist upon whatever promotes his object, and to withdraw adroitly from whatever is prejudicial to him. It is in such a way that physicians act; they continue or cease to give medicines, just as they see that they are relished or loathed by the patient. 20. Sometimes, if it is not easy to make a point that we have stated clear, we may raise another question, and fix the attention of the judge, if possible, upon it; for when you yourself cannot answer to a thing, what is to be done but to find something else to which your opponent may be unable to answer? 21. In regard to most parts of a disputation, as I observed,* the same is to be said as in regard to the examination of witnesses, the difference being only with respect to persons; as in the one case the contest is between advocates, and in the other between the witness and the advocate. But to exercise one's self in disputation is much more easy; for it is possible, and may be of the greatest advantage, to choose, in conjunction with some one engaged in the same studies, a subject, either true or fictitious, for discussion, and to take different sides upon it after the manner of altercations in the courts; a practice which may also be adopted in respect to the simple sort of questions.†

22. I would also have an advocate understand in what order his various proofs should be brought before the judge in such disputations; and the same plan may be adopted with

* Sect. 2.

† I understand questions, *theses*, as distinct from causes; see v. 10, 53; ii. 1 9. *Spalding.*

regard to them as with regard to the arguments in his speech, namely, that the strongest be placed first and last; for the former dispose the judge to believe him, and the latter to decide in his favour.

CHAPTER V.

Of judgment and sagacity; their importance, § 1—6. Examples from Demosthenes, 7, 8. From Cicero, 9, 10. Conclusion of the book, 11.

1. Having treated of this head to the best of my ability, I should not hesitate to pass at once to *disposition*, which follows next in order, were I not apprehensive that, as there are writers who place *judgment* * under invention, I might be thought by some to have purposely omitted that subject, though it is a quality, in my opinion, so blended and mixed with every part of oratory that its influence is inseparable from even a single thought or word; and it is not communicable by art any more than taste or smell. 2. All that I can do, accordingly, is to teach, and persevere in teaching, what is to be imitated or avoided in each department of the art, in order that judgment may be exercised in reference to it. I shall continue to teach, therefore, that we must not attempt what cannot be accomplished; that we must avoid all arguments that are contradictory or common to both sides;† and that nothing in our speech must be barbarous or obscure; but the observance of all such rules must be under the guidance of common sense, which cannot be taught.

3. From *judgment* I do not consider that *sagacity* greatly differs, except that judgment is employed about things which are evident in themselves, and sagacity about things that are obscure, having either not been noticed at all, or being of a doubtful nature. Judgment is very often sure; sagacity is a certain reasoning, as it were, from the depths of things, generally weighing and comparing different arguments, and exercising the faculties both of invention and arbitration. 4. But such observations are not to be taken as universally true; for sagacity is often exercised on some circumstance that *precedes the pleading* of a cause; as Cicero, in pleading against Verres,

* See iii. 3, 5, 6.

† *Communia.*] See iii. 3, 5.

appears with great sagacity to have preferred occupying a shorter time with his speech to prolonging it to the year in which Quintus Hortensius was to be consul.* 5. In the *conduct of a pleading*, sagacity holds the first and most influential place; for it is required to determine what we ought to say, what to suppress, and what to defer; whether it be better to deny a fact, or to justify it; when we should use an exordium, and of what kind; whether we should give a statement of facts, and in what form; whether we should rest our case on law or on equity; what order is the most eligible; what style we should adopt, and whether it be expedient to speak boldly, gently, or humbly. 6. But upon these points I have already, as occasiou has allowed, given some directions, and I shall continue to do so in the rest of my work. I will make a few remarks here, however, by way of example, that it may be more clearly understood what it is that I think cannot be taught by rules of art. 7. The sagacity of Demosthenes is commended in this respect, that, when he was recommending war to the Athenians, who had previously tried it with little success, he showed that nothing had been done in it *with prudent management*, so their neglect might be made amends for, whereas if no error had been committed, there would have been no ground for better hopes for the future. 8. The same orator, too, when he feared to give offence if he reproached the people for their indolence in maintaining the liberty of their country, preferred to dwell on the praise of their ancestors, whc had governed it with such effect; for he thus found them willing to listen, and it naturally followed that, while they approved of the better, they repented of the worse. 9. As to Cicero, his speech for Cluentius alone is worth an infinity of examples. For what proof of sagacity in it hall I admire most? The opening of the case, in which he deprives the mother, whose influence bore hard upon her son, of all credit?

* When Cicero saw that it was in contemplation to prolong the proceedings to another year and another prætorship, and to rescue the accused by the aid of Hortensius and Metellus, who would then be consuls, he contrived to avoid protracting his pleading, and spending time on increasing the number of his charges, and called witnesses to support each individual charge that he had made, consigning them to Hortensius for examination; a mode by which Hortensius was so fatigued, that he ceased to offer further opposition; and Verres, despairing of support, went of his own accord into exile. *Asconius Pedianus.*

Or his determination to transfer the guilt of having bribed the judges on the adverse party, rather than deny it, *on account*, as he says, *of the notorious infamy of their judgment?* Or his recourse, last of all, in so odious an affair, to the support of the law, a mode of defence by which he would have alienated the feelings of the judges, if they had not been previously softened? Or his protestation that he adopted that course contrary to the inclination of Cluentius? 10. Or what shall I commend in his speech for Milo? That he made no statement of the case until he had removed the prejudices entertained against the accused?* That he threw the odium of having lain in wait upon Clodius, though the encounter was in reality fortuitous? That he commended the deed, and yet exculpates Milo from having intentionally committed it? That he put no supplications into the mouth of his client, but took the character of suppliant on himself?† It would be endless to enumerate all the proofs of sagacity that he exhibits; how he divests Cotta of all credit;‡ how he opposes himself in the place of Ligarius;§ how he rescues Cornelius‖ by alleging the openness of his confession. 11. I think it sufficient to observe, that there is nothing, not only in oratory, but in the whole conduct of life, more valuable than sagacity;¶ that without it all instruction is given in vain; and that judgment can do more without learning than learning without judgment; for it is the part of that virtue to adapt our speech to places, circumstances, and characters. But as this part of my subject is somewhat comprehensive, and is intimately connected with oratorical effect, it shall be noticed when I proceed to give directions on speaking with propriety.**

* Comp. iii. 6, 93.
† Comp. c. 1, sect. 25, 27.
‡ Comp. v. 13, 30.
§ Comp. v. 10, 93.
‖ Comp. v. 13, 18, 26.
¶ See c. 3, sect. 34.
** B. xi. c. 1; comp. i. 5, 1.

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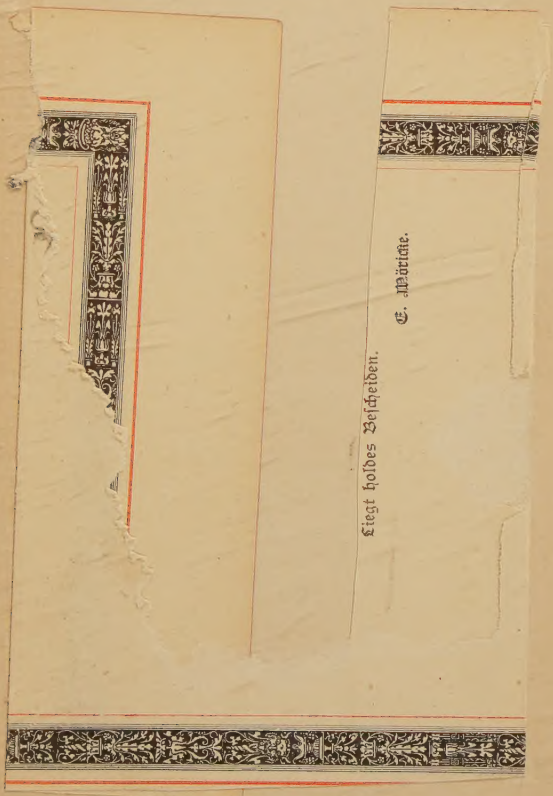
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